

7

United States
Circuit Court of Appeals
For the Ninth Circuit.

GEORGE W. ALBRECHT,
Plaintiff in Error,

vs.

J. E. RILEY and M. H. MARSTON, Copartners
Doing Business as RILEY and MARSTON,
Defendants in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court
of the Territory of Alaska, Fourth Division.

Filed

JAN 28 1915

F. D. Monckton,
Clerk.

United States
Circuit Court of Appeals
For the Ninth Circuit.

GEORGE W. ALBRECHT,

Plaintiff in Error,

vs.

J. E. RILEY and M. H. MARSTON, Copartners
Doing Business as RILEY and MARSTON,
Defendants in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court
of the Territory of Alaska, Fourth Division.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Answer	6
Assignment of Errors.....	116
Attorneys of Record, Names and Addresses of..	1
Bond on Writ of Error.....	121
Certificate of Clerk U. S. District Court to Tran- script of Record.....	127
Citation on Writ of Error (Original).....	125
Complaint	3
Defense	76
Demurrer to First Affirmative Answer.....	9
 EXHIBITS:	
Plaintiff's Exhibit "A"—Bill of Sale—W. R. Day et al. to Raymond Blais, Ron- ald Blais and _____.....	17
Plaintiff's Exhibit "B"—Mining Deed, Chas. Purdy to W. R. Day.....	19
Plaintiff's Exhibit "C"—Quitclaim Deed, July 31, 1911, Raymond Blais et al. to W. R. Day.....	20
Plaintiff's Exhibit "D"—Quitclaim Deed, September 15, 1911, W. R. Day to George W. Albrecht.....	23

Index.	Page
Judgment.....	26
Motion for Default and Judgment.....	13
Motion for Directed Verdict in Favor of Defendants, etc.....	103
Motion for Order of Default and Judgment, and Affidavit of George W. Albrecht in Support Thereof	11
Names and Addresses of Attorneys of Record..	1
Order Allowing Writ of Error and Fixing Amount of Bond.....	115
Order Approving, etc., Bill of Exceptions.....	111
Order Denying Motion for Default.....	14
Order Overruling Demurrer and Permitting Amended Answer to be Filed.....	10
Petition for Writ of Error.....	114
Praecipe for Transcript of Record.....	1
Reply	16
Stipulation Re Transcript of Record.....	112
Testimony	27
TESTIMONY ON BEHALF OF PLAINTIFF:	
ALBRECHT, GEO. W.....	28
(Recalled)	35
(Recalled)	53
DAY, W. R. (Recalled).....	48
(Recalled)	51
(Recalled—Cross-examination by Mr. Roden)	52
Recalled.....	69
Cross-examination by Mr. Roden.....	69
Redirect Examination by Mr. Taylor..	75

Index.

Page

TESTIMONY ON BEHALF OF PLAINTIFF—Continued:

FOX, J. F.....	33
Recalled.....	36
Recalled.....	75
KEHOE, F. L.....	50
MANN, ROBERT.....	55
Cross-examination by Mr. Roden.....	61
Redirect Examination by Mr. Taylor..	65
MUTCHLER, DAVID.....	66
Cross-examination by Mr. Roden.....	68
PURDY, C.....	29
Cross-examination by Mr. Roden.....	32
Redirect Examination by Mr. Taylor..	33
Recalled.....	46
Cross-examination by Mr. Roden.....	47
TAYLOR, CHARLES E.....	52

TESTIMONY ON BEHALF OF DEFENDANTS:

BRISTOL, W. M.....	76
MANN, ROBERT (Recalled).....	96
Cross-examination by Mr. Taylor.....	99
McCARTY, M. D.....	94
Cross-examination by Mr. Taylor.....	96
McDONALD, D. S.....	87
Cross-examination by Mr. Taylor.....	89
McEWAN, THOMAS.....	90
Cross-examination by Mr. Taylor.....	93
RILEY, J. E., in His Own Behalf.....	100
Cross-examination by Mr. Taylor.....	102

	Index.	Page
TESTIMONY ON BEHALF OF DEFENDANT—Continued:		
STRANDBERG, CHARLES.....	81	
Cross-examination by Mr. Taylor.....	84	
Redirect Examination by Mr. Roden..	87	
Verdict.....	25	
Verdict.....	26	
Writ of Error (Original).....	123	

[Names and Addresses of Attorneys of Record.]

*In the District Court for the Territory of Alaska,
Fourth Division.*

No. 97—I.

GEO. W. ALBRECHT,

Plaintiff,

vs.

J. E. RILEY and M. H. MARSTON, Copartners
Doing Business as Riley and Marston,
Defendants.

CHAS. E. TAYLOR, Attorney for Plaintiff,
Iditarod, Alaska.

HENRY RODEN, Attorney for Defendants,
Iditarod, Alaska. [1*]

*In the District Court for the Territory of Alaska,
Fourth Division.*

No. 97—I.

GEO. W. ALBRECHT,

Plaintiff,

vs.

J. E. RILEY and M. H. MARSTON, Copartners
Doing Business as Riley and Marston,
Defendants.

Praecipe for Transcript of Record.

To the Clerk of the Above-entitled Court:

You will please prepare the transcript of the record of this case to be filed in the office of the Clerk

*Page-number appearing at foot of page of original certified Record.

of the United States Circuit Court of Appeals for the Ninth Circuit under the Writ of Error heretofore perfected to said Court, and include in said transcript the papers included within the stipulation entered into by the plaintiff and the defendants by and through their respective attorneys in this case, namely: Complaint, Answer, Demurrer to Answer, Order overruling Demurrer and permitting Amended Answer, Affidavit of Geo. W. Albrecht, Motion for Default, Order denying motion for Default, Reply, Plaintiff's Exhibit "A," "B," "C," "D," Verdict, Judgment, Testimony, Petition for Writ of Error, Stipulation; together with all papers filed subsequent to said stipulation.

Said transcript to be prepared as required by law and the rules of this Court and the rules of the United States Circuit Court of Appeals for the Ninth Circuit, and filed in the office of the Clerk of the said United States Circuit Court of Appeals for the Ninth Circuit, San Francisco, California, before the first day of November, nineteen hundred and fourteen.

CHAS. E. TAYLOR,
Attorney for Plaintiff in Error.

Filed in the District Court, Territory of Alaska,
4th Div. Jul. 28, 1914.

ANGUS McBRIDE,
Clerk.
By Geo. W. Albrecht,
Deputy. [2]

*In the District Court for the Territory of Alaska,
Fourth Division.*

No. 97—I.

GEO. W. ALBRECHT,

Plaintiff,

vs.

J. E. RILEY and M. H. MARSTON, Copartners
Doing Business as Riley and Marston,
Defendants.

Complaint.

COMES now the plaintiff, George W. Albrecht, and for cause of action against the above-named defendants, complains and alleges:

I.

That at all of the times mentioned herein the plaintiff was and is now the owner of that certain placer mining claim known and described as the Elliott Association Placer mining claim situated on Boulder Creek in the Otter Mining Precinct, Fourth Division, Territory of Alaska.

II.

That between the first day of October, 1911, and the 31st day of January, 1912, the said defendants, with their agents, servants and employees, and with full knowledge and notice of plaintiff's rights in and to the mining claim aforesaid, did forcibly enter upon said claim and did cut down growing and standing trees thereon and cut the same into cordwood, sufficient in quantity to make seven hundred (700)

cords of wood, and did carry away from said mining claim the said seven hundred cords of wood and did convert the same to their own use and benefit, all of the said acts of said defendants being contrary to and against the wishes and desire of plaintiff and without his consent. [3]

III.

That prior to the time of the committing of the said acts by said defendants, notices to trespassers were posted on the said claim, forbidding all persons to trespass on said mining claim; that at various times during the continuance of said trespass by said defendants and their employees, they were notified and warned against such trespass, but that defendants and their agents and employees disregarded such notices and warnings, and continued their acts of trespass as above set forth.

IV.

That the value of said timber and wood to plaintiff and the reasonable value thereof was, and is, three dollars (\$3.00) per cord; that by reason of the acts of said defendants as above set forth, plaintiff lost said timber and trees sufficient to make 700 cords of wood, and the said placer mining claim belonging to plaintiff was greatly damaged, and lessened in value of the amount of \$2100.00, that being the value of said wood as aforesaid.

V.

That by reason of the acts of the said defendants as above complained of, and under and by virtue of the laws of Alaska as set forth in Sections 322 and 323 of Chapter 33, Part IV of Carter's Annotated

Codes of Alaska, the said defendants became liable to plaintiff in treble the amount of said damage; that defendants have not paid the same nor any part thereof, and there is now due and owing from defendants to plaintiffs the sum of Sixty-three Hundred Dollars (\$6300.00).

WHEREFORE plaintiff prays judgment against the said defendants for the sum of Sixty-three Hundred Dollars (\$6300.00), together with the costs and disbursements of this action.

CHAS. E. TAYLOR,
Attorney for Plaintiff. [4]

United States of America,
Territory of Alaska,
Otter Precinct,—ss.

Charles E. Taylor, being first duly sworn on oath, deposes and says: That he is the attorney for the plaintiff in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof, and that the same is true as he verily believes. That the plaintiff therein named is absent from the Territory of Alaska, and Otter Precinct aforesaid, and cannot make this verification himself, and for that reason this affiant makes this verification for and on behalf of said plaintiff.

CHAS. E. TAYLOR.

Subscribed and sworn to before me this 6th day of May, 1912.

[Seal] E. M. STANTON,
Notary Public in and for Alaska. Commissioner
and Ex-officio.

Filed in the District Court, Territory of Alaska,
4th Div. May 15, 1912. C. C. Page, Clerk. By
E. M. Stanton, Deputy. [5]

*In the District Court for the Fourth Division,
Territory of Alaska.*

No. 97—I.

GEORGE W. ALBRECHT,

Plaintiff,

vs.

J. E. RILEY, and M. H. MARSTON, Copartners
Doing Business as RILEY and MARSTON,

Answer.

COMES now the defendants by Henry Roden,
their attorney, and answering the complaint of the
plaintiff herein deny and allege as follows:

1.

Answering paragraph one of said complaint the
defendants deny each and every the allegations
therein set forth and the whole thereof.

2.

Answering paragraph two of said complaint the
defendants deny each and every the allegations
therein set forth, and especially deny that they,
their agents, servants or employees, did cut and re-
move from the placer mining claim described in said
complaint 700 cords of wood or any other quantity of
wood whatsoever or at all.

3.

Answering paragraph three of said complaint the

defendants deny each and every the allegations therein set forth and the whole thereof.

4.

Answering paragraph four of said complaint the defendants deny each and every the allegations therein set forth and especially deny that the said placer mining claim has been damaged in the sum of \$2100.00, or in any other sum whatsoever or at all.

[6]

5.

Answering paragraph five of said complaint defendants deny the allegation set forth therein and the whole thereof and especially deny that there is due and owing to the plaintiff from the defendants the sum of \$6300.00 or any other sum whatsoever or at all.

As a further and affirmative defense the defendants allege.

1.

That in the month of February 1910, plaintiff's predecessors in interest, to wit: J. Elliott, J. E. Miller, J. Day, Fred Church, J. F. Fox, C. Purdy, Wm. Gray and J. Raap entered upon the premises described in the plaintiff's complaint as the "Elliott Association" placer mining claim, which was then and is now unappropriated public domain, and made a pretended mining location thereon.

2.

That the said premises at the time of making the said pretended mining location was chiefly valuable for the timber standing and growing thereon.

3.

That the area embraced within the said premises and pretended mining location never was, and is not now valuable for the minerals contained therein, but its sole value consists of the trees and timber standing thereon.

4

That the said pretended mining location was not made in good faith because of the minerals therein contained, but on the contrary the said locators, J. Elliott, J. E. Miller, J. Day, Fred Church, J. F. Fox, C. Purdy, Wm. Gray, J. Raap did mark the boundaries thereof for the sole purpose of securing the timber situate thereon and not for placer mining purposes, that no discovery of gold as required by law has ever been made within the boundaries of said pretended mining location by either plaintiff's grantor or by any person for them or on their behalf.

[7]

As a further and second affirmative defense defendants allege.

1.

That the plaintiff is not the sole owner of the Elliott Association, but that one J. Elliott has an interest in the said Elliott Association and should be made a party plaintiff in this action.

WHEREFORE defendants pray that the plaintiff take nothing by his complaint and that they go hence with their costs and disbursements herein.

HENRY RODEN,
Attorney for Defendants.

Territory of Alaska,
Otter Precinct,—ss.

J. E. Riley, first being duly sworn, on oath deposes and says: That he is one of the defendants in the above-entitled action, that he has read the foregoing answer knows the contents thereof, and that the same is true as he verily believes.

J. E. RILEY.

Sworn and subscribed to before me this July 10, 1912.

[Seal]

HENRY RODEN,
Notary Public.

Filed in the District Court, Territory of Alaska, 4th Div. Jul. 16, 1912. C. C. Page, Clerk. [8]

*In the District Court for the Territory of Alaska,
Fourth Division.*

No. 97—I.

GEORGE W. ALBRECHT,

Plaintiff,

vs.

RILEY & MARSTON, Copartners,

Defendants.

Demurrer to First Affirmative Answer.

COMES now the above-named plaintiff by his attorney, Chas. E. Taylor, and demurs to the first further affirmative defense contained in the answer of the above-named defendants on file herein, for the reason that the same does not state facts sufficient

to constitute a defense to plaintiff's complaint.

Plaintiff further demurs to the second further and affirmative defense contained in said answer, for the reason that the same does not constitute a defense to plaintiff's complaint.

CHAS. E. TAYLOR,
Attorney for Plaintiff.

Received copy of above this 16th day of July 1912.

HENRY RODEN.
Attorney for Defendant.

Filed in the District Court, Territory of Alaska,
4th Div. Jul. 17, 1912. C. C. Page, Clerk. [9]

*In the District Court for the Territory of Alaska,
Fourth Division.*

No. 97—I.

GEORGE W. ALBRECHT,

Plaintiff,

vs.

J. E. RILEY and M. H. MARSTON,

Defendants.

**Order Overruling Demurrer and Permitting
Amended Answer to Be Filed.**

This matter having heretofore come on for hearing on the demurrer to the defendants' answer, and after argument thereof the court having taken the same under advisement, now, after due consideration,

IT IS ORDERED that said demurrer be, and the same is hereby, overruled, and the defendants, upon application, are given permission to file an amended answer forthwith.

Done in open court this 12th day of September,
1912.

F. E. FULLER,
District Judge.

Entered in Court Journal No. 1, page 379, Iditarod,
Alaska.

Filed in the District Court, Territory of Alaska,
4th Div. Sep. 12, 1912. C. C. Page, Clerk. [10]

[Motion for Order of Default and Judgment, and
Affidavit of George W. Albrecht in Support
Thereof.]

*In the District Court, for the Territory of Alaska,
Fourth Division.*

No. 97—I.

GEORGE W. ALBRECHT,
Plaintiff,

vs.

J. E. RILEY and M. H. MARSTON, Copartners
Doing Business as RILEY & MARSTON,
Defendants.

United States of America,
Fourth Division,
Otter Precinct,—ss.

George W. Albrecht, being first duly sworn, on oath says: That he is the plaintiff in the above-entitled action; that he is an attorney at law, duly admitted and licensed to practice in all of the courts of the said Territory of Alaska; that the attorney of

record in the above-entitled action, Chas. E. Taylor, is now without the said Territory of Alaska, and that there is no attorney within reach, nor within one hundred miles of this affiant.

That personal service of the summons in the above-entitled action was had upon the defendant J. E. Riley, upon the 22d day of May, 1912; that upon the 24th day of June, 1912, an affidavit and motion for default were made and filed herein against the said defendants; that upon said 24th day of June, and after the filing of said affidavit and motion for default, Henry Roden entered his appearance as attorney for the defendant J. E. Riley.

That said default was set aside and defendants allowed to file their answer, which was done on the 16th day of July, 1912, said answer being the joint answer of both of said defendants;

That to this answer the plaintiff demurred, said demurrer being by the court overruled; whereupon, and on the 12th day of September, 1912, in open court and upon the application of the said defendants, they were given permission to file an amended answer [11] forthwith; that no amended answer has in this case been filed, nor have any steps been taken for an enlargement of the time in which to file said amended answer; there is no motion nor pleading, nor other proceeding now pending herein, but the action is without any steps whatever since the said 12th day of September, 1912.

That the time within which said amended answer could have been filed is long since past.

GEO. W. ALBRECHT.

Subscribed and sworn to before me this the Fourteenth day of January, A. D. 1913.

[Seal] CYRIL P. WOOD,
Notary Public in and for the Territory of Alaska,
Residing at Iditarod.

Comes now the plaintiff, George W. Albrecht, in his own proper person, and by reason of the premises set forth in the foregoing affidavit, makes application to this Honorable Court, and moves for an order of default and judgment thereupon, against the said defendants J. E. Riley and M. H. Marston, and each of them, and in favor of the plaintiff herein, for the relief demanded in the complaint.

GEO. W. ALBRECHT.

Filed in the District Court, Territory of Alaska,
4th Div. Jan. 14, 1913. C. C. Page, Clerk. Geo.
W. Albrecht, Deputy. [12]

*In the District Court, Territory of Alaska, Fourth
Division.*

No. 97—I.

GEORGE W. ALBRECHT,

Plaintiff,

vs.

J. E. RILEY and M. H. MARSTON, Copartners
Doing Business as RILEY & MARSTON,
Defendants.

Motion for Default and Judgment.

COMES now the above-named plaintiff, by his attorney Charles E. Taylor, and moves the Court for

an order of default and judgment against the above-named defendants J. E. Riley and M. H. Marston, and each of them.

Said motion is based upon the affidavit of Geo. W. Albrecht on file herein, and upon the papers and files of said action.

CHAS. E. TAYLOR,
Attorney for Plaintiff.

Received copy of the above motion also copy of affidavit of Geo. W. Albrecht on this — day of _____, 19—.

HENRY RODEN,
Attorney for Defendants.

Filed in the District Court, Territory of Alaska, 4th Div., June 27, 1913. C. C. Page, Clerk. [13]

*In the District Court, for the Territory of Alaska,
Fourth Division.*

No. 97—I.

GEORGE W. ALBRECHT,

Plaintiff,

vs.

J. E. RILEY AND M. H. MARSTON,

Defendants.

[Order Denying Motion for Default.]

This matter coming on hearing in open Court on this day upon the motion for the plaintiff for default and judgment against the defendants, and the plaintiff appearing by his attorney Chas. E. Taylor Esq., and the defendants by their attorney Henry

Roden, Esq., and after argument had, and

It appearing to the Court that upon the 12th day of September 1912 this Court had made and entered its order over-ruling the demurrer of the plaintiff to the answer of the defendants on file herein, and the Court thereupon having given leave to the defendants to file an amended answer herein, and,

It appearing to the Court that the defendants had not elected to file an amended answer herein, and the Court being fully and duly advised in the premises,

NOW THEREFORE IT IS HEREBY ORDERED, and this Court does so order that the motion of the plaintiff for default and judgment against the defendants be, and the same is hereby denied, to which the plaintiff having excepted, and exception is allowed.

Done in open Court this 7th day of July, 1913.

F. E. FULLER,

Judge.

Entered in Court Journal No. 1-I, page 463.

Filed in the District Court Territory of Alaska,
4th Div., Jul. 7th, 1913. C. C. Page, Clerk. [14]

*In the District Court for the Territory of Alaska,
Fourth Division.*

No. 97—I.

GEO. W. ALBRECHT,

Plaintiff,

vs.

J. E. RILEY and M. H. MARSTON,

Copartners,

Defendants.

Reply.

COMES now the above-named plaintiff, and replying to the matters and things contained in the further and affirmative defense of the defendants, alleges:

1.

That as to paragraph 1 of said defense, plaintiff admits that his predecessors in interest entered upon the premises known as the Elliott Association, but denies that they made a pretended mining location thereon, but, on the contrary, that the said location by them made, was made in good faith and in accordance with the *require* of law on Dec. 16, 1909.

2.

That as to paragraphs 2 and 3 of said affirmative defense plaintiff denies the same, and each and every allegation therein contained.

3.

Denies each and every allegation contained in paragraph 4 of said affirmative defense.

Replying further to the second affirmative defense

of defendants answer, plaintiff denies each and every allegation therein contained.

CHAS. E. TAYLOR,
Attorney for Plaintiff [15]

United States of America,

Territory of Alaska,—ss.

George W. Albrecht, being first duly sworn on oath, deposes and says: That he is the plaintiff in the above-entitled action; that he has read the foregoing reply, knows the contents thereof and that the same is true as he verily believes.

GEO. W. ALBRECHT.

Subscribed and sworn to before me this 15th day of July 1913.

[Seal] CHAS. E. TAYLOR,

Notary Public in and for Alaska. Commission expires Dec. 24, 1915.

Filed in the District Court, Territory of Alaska, 4th Div., July 16, 1913. C. C. Page, Clerk. [16]

[Plaintiff's Exhibit "A"—Bill of Sale—W. R. Day et al. to Raymond Blais, Ronnald Blais and ——.]

KNOW ALL MEN BY THESE PRESENTS: That W. R. DAY, JOHN RAAP, FRED CHURCH, J. E. FOX, W. E. GRAY, J. E. MILLER, JOHN ELLIOTT, District of Alaska, have bargained, granted sold and conveyed to RAYMOND BLAIS, RONNALD BLAIS and —— of Iditarod, Alaska, the following described personal property, to wit: Seven-Eighths interest in the Elliott Association right fork of Boulder Creek tributary of Otter Creek

Iditarod Recording Dist for the consideration of one dollar \$1.00 to us in hand to date. All of said personal property is lawfully our own, free from all incumbrances whatever and we will defend the title to the same.

WITNESS our hand and seal this —— day of March 28, A. D. 1911

W. R. DAY.

JOHN RAAP.

FRED CHURCH.

By W. R. DAY,

Atty. in Fact.

JOHN ELLIOTT. [Seal]

J. F. FOX. [Seal]

J. E. MILLER.

W. E. GRAY.

By J. F. FOX,

Atty. in Fact.

Signed, sealed and delivered in the presence of:

KARL F. THEILE.

JOHAN SPENCER.

[Endorsed]: Filed for Record at request of Raymond Blais, on the 29th day of March, 1911, at 2 P. M., and recorded in Vol. —— of Deeds, page 204. Otter Recording District, Alfred E. Maltby, Recorder.

[Endorsed]: 97-I, Pl. Ex. "A" in evidence July 16, 1913. C. C. P. Clerk. [17]

[Plaintiff's Exhibit "B"—Mining Deed, Chas.
Purdy to W. R. Day.]

THIS DEED made this — day of September, 1911, between CHAS. PURDY of Flat, Iditarod, District, grantor, and W. R. DAY of same place grantee,

WITNESSETH: That the said grantor in consideration of the sum of One Dollar (\$1.00) lawful money of the United States, the receipt whereof is hereby acknowledged, has released, remised and forever quitclaimed unto the said grantee his heirs and assigns all of the right, title and interest of said grantor in and to the following described placer mining claim, situated in the District of Alaska Iditarod Recording District, described as follows: An undivided one-eighth interest in and to the Elliott Association on the Right Fork of Boulder Creek a tributary of Otter Creek in the Iditarod Recording Precinct, District of Alaska.

Together with all the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, all and singular, the said premises together with the appurtenances, unto the said grantee, his heirs and assigns forever.

IN WITNESS WHEREOF the said grantee has hereunto set his hand this 4th day of September, 1911.

CHAS. PURDY.

In the presence of:

CHAS. E. TAYLOR.

H. R. SIEBE. [18]

District of Alaska,
U. S. A.—ss.

This certifies that on this 5th day of September, A. D. 1911, before me, a notary public in and for the District of Alaska, duly commissioned and sworn and qualified, personally appeared Charles Purdy, to me known to be the person whose name is subscribed to the foregoing instrument and to me acknowledged that he executed the same freely and voluntarily for the uses and purposes herein set forth.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] CHAS. E. TAYLOR,
Notary Public in and for the District of Alaska.

[Endorsed]: Recorded at the request of Geo. W. Albrecht, Sept. 7, 1911, at 1 min. past 11 o'clock A. M., in Vol. — of Deeds, at page 377, Records of Otter Recording Precinct. E. M. Stanton, Recorder.

[Endorsed]: 97 I, Pl. Ex. "B," July 16, 1913.
C. C. P. Clerk. [19]

[Plaintiff's Exhibit "C"—Quitclaim Deed, July 31, 1911, Raymond Blais et al. to W. R. Day.]

THIS INDENTURE, made and executed on this 31st day of July A. D. 1911 by and between Raymond Blais and Ronauld Blais both of Flat Creek, Otter Precinct, Territory of Alaska, parties of the first part, and W. R. Day of the same place, party of the second part,

WITNESSETH: That the said parties of the first part, for and in consideration of the sum of One Dollar (\$1.00) lawful money of the United States of America, and other good and valuable consideration, to him paid, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents do hereby grant, bargain, sell, convey, assign, transfer and forever quit-claim unto the said party of the second part and to his assigns the following placer mining claim situated in Otter Precinct, Territory of Alaska, and more particularly described as follows, to wit:

All of the right, title and interest of said first parties in and to that certain placer mining claim known and described as the Elliott Association placer mining claim situated on the Right Fork of Boulder Creek, a tributary of Otter Creek, in the Otter Mining Precinct, Fourth Division of the Territory of Alaska.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the rents, issues and profits thereof.

TO HAVE AND TO HOLD the said mining claim unto the said party of the second part and to his assigns forever.

IN WITNESS WHEREOF the said parties of the first part have hereunto set their hand on the day

and year first above written.

RONAULD BLAIS.

RAYMOND BLAIS.

Signed, sealed and delivered in the presence of:

DAN McCrimmon.

F. L. KEHOE [20]

United States of America,

Territory of Alaska—ss.

THIS IS TO CERTIFY that on this 31st day of July, 1911, before me, a Notary Public in and for the Territory of Alaska, personally appeared Raymond Blais and Ronaul Blais to me known to be the persons described in and who executed the foregoing instrument and acknowledged to me that they each signed the same as his free act and deed for the uses and purposes therein mentioned.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my Notarial Seal on the day and year in this Certificate first above written.

[Seal]

F. L. KEHOE,

Notary Public in and for Alaska.

[Endorsed]: Filed for record at request of Geo. W. Albrecht on the 7th day of September, 1911, at — min. past 11 o'clock and recorded in Vol. — of Deeds, page 376. Otter Recording District, E. M. Stanton, Recorder.

[Endorsed]: 97—I, Pl. Ex. "C," July 16, '13.
C. C. P., Clerk. [21]

[Plaintiff's Exhibit "D"—Quitclaim Deed, September 15, 1911, W. R. Day to George W. Albrecht.]

THIS INDENTURE, Made this 15th day of September, in the year of our Lord, One Thousand Nine Hundred and Eleven, between W. R. DAY of Otter Precinct, Territory of Alaska, the party of the first part and George W. Albrecht of the same place, the party of the second part, WITNESSETH:

That the said party of the first part, for and in consideration of the sum of One Dollar (\$1.00) lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do, by these presents, remise, release and forever quitclaim unto the said party of the second part, and to his heirs and assigns, the following described tract, lot or parcel of land, situated, lying and being in Otter Mining and Recording Precinct, Territory of Alaska, particularly bounded and described as follows, to wit:

All of the right, title and interest of the said party of the first part in and to that certain placer mining claim known as the "ELLIOTT" Association claim, situated on Boulder Creek in the Otter Mining and Recording Precinct, Fourth Division, Territory of Alaska. Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders rents, issues and profits thereof.

TO HAVE AND TO HOLD all and singular, the

said premises together with the appurtenances unto the said party of the second part, and to his heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

W. R. DAY. [Seal]

Signed, sealed and delivered in Presence of:

CHAS. E. TAYLOR.

H. S. HOLMES. [22]

United States of America,
Territory of Alaska,
4th Division,—ss.

THIS IS TO CERTIFY That on this Fifteenth day of September, A. D. 1911, before me, Charles E. Taylor, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally came W. R. Day, to me known to be the individual described in and who executed the within instrument, and acknowledged to me that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in this certificate first above written.

[Seal] CHAS. E. TAYLOR,
Notary Public in and for the Territory of Alaska,
Residing at Iditarod, Alaska.

[Endorsed]: 97-I. Pl. Ex. "D," July 16, '13.
C. C. P., Clerk. [23]

*In the District Court Territory of Alaska, Fourth
Division.*

No. 97—I.

GEORGE W. ALBRECHT,

Plaintiff,

vs.

J. E. RILEY et al.,

Defendants.

Verdict.

We, the jury duly empaneled and sworn to try the issues in the action wherein Geo. W. Albrecht is plaintiff and J. E. Riley and M. H. Marston are defendants, do find for the defendants and against the plaintiff.

ALBERT J. LOWE,
Foreman.

Entered in Court Journal No. 1—I, page 494.

Filed in the District Court Territory of Alaska,
4th Div. Jul. 16, 1913. C. C. Page, Clerk. [24]

*In the District Court for the Territory of Alaska,
Fourth Division at Iditarod.*

No. 97—I.

GEORGE W. ALBRECHT,

Plaintiff,

vs.

J. E. RILEY and M. H. MARSTON,

Defendants.

Judgment.

This cause came on regularly to be heard on the 15th day of July, 1913, there appeared in open court the plaintiff and defendants with their attorneys, and a jury of twelve persons were regularly empaneled and sworn to try said action. Witnesses on the part of plaintiff and defendants were regularly sworn and examined and the trial proceeded with.

After all the testimony and evidence has been submitted, defendant moves the Court to instruct the jury to return a verdict in favor of the defendants and against the plaintiff, and the Court after hearing the argument of counsel grants the said motion and instructs the jury to return a verdict in favor of defendants and against plaintiff.

THEREUPON the jury find a verdict in favor of defendants, which verdict is received by the Court and filed with the clerk, and is in words as follows, to wit:

*In the District Court for the Territory of Alaska,
4th Division.*

No. 97—I.

GEORGE W. ALBRECHT,

Plaintiff,

vs.

J. E. RILEY et al.,

Defendants.

Verdict.

We, the jury empaneled and sworn to try the is-

sues in the action wherein George W. Albrecht is plaintiff and J. E. Riley and M. H. Marston are defendants, do find for the defendants and against the plaintiff.

ALBERT J. LOWE,
Foreman. [25]

WHEREFORE by reason of the law and the premises aforesaid:

IT IS ORDERED, ADJUDGED AND DECREED that plaintiff take nothing by this action and that defendants recover their costs and disbursements herein.

F. E. FULLER,
District Judge.

Entered in Court Journal No. 1—I, page 521.

Filed in the District Court, Territory of Alaska,
4th Div. Jul. 25, 1913. C. C. Page, Clerk. [26]

*In the District Court for the Territory of Alaska,
Fourth Division.*

No. 97—I.

GEORGE W. ALBRECHT,

Plaintiff,

vs.

J. E. RILEY & M. H. MARSTON, Copartners,
Doing Business as RILEY & MARSTON,
Defendant.

Testimony.

This cause came on regularly for trial in the above-entitled court, at the special Iditarod term thereof,

held at Iditarod, Alaska, on the 15th day of July A. D. 1913, before the Honorable Frederic E. Fuller, United States District Judge, and a jury duly impaneled and sworn; the plaintiff appearing in person, and by his attorney, Charles E. Taylor Esq., and the defendant appearing in person and by his attorney, Henry Roden Esq., whereupon the following proceedings were had and done, and the following testimony taken, to wit: [27]

[**Testimony of Geo. W. Albrecht, in His Own Behalf.]**

GEO. W. ALBRECHT, plaintiff, appearing in his own behalf, testified as follows:

Direct Examination by Mr. TAYLOR.

Q. You are the plaintiff in this action?

A. Yes, sir: my name is Geo. W. Albrecht, I am fifty-seven years old, a citizen of the United States, a resident of the Territory of Alaska, by profession a lawyer, and by occupation commissioner of this, Otter Precinct.

Q. I will ask you if you know the Elliott Association placer mining claim on Boulder creek, and where it is? A. In a general way, yes, sir.

Q. You state in your complaint that you are the owner of that claim; by virtue of what instrument or possession do you own it? A. By a deed.

Q. Have you that deed.

Mr. RODEN.—We object to that question, because it has not been shown that any such claim as the Elliott Association claim exists.

(COURT.) I think you had better proceed in the

(Testimony of George W. Albrecht.)

regular way, and establish your location first, Mr. Taylor.

(Argument.)

(Witness excused.)

[**Testimony of C. Purdy, for Plaintiff.]**

C. PURDY, for the plaintiff, testified as follows:

Direct Examination by Mr. TAYLOR.

Q. Where do you live, and what is your occupation?

A. I live in this district; usually mining and prospecting.

Q. Do you know where you were, and who you were with, on or about the middle of December, 1909?

A. Yes, I was on Boulder creek, and with John Elliott and Joe Fox.

Q. You know Joe Fox, do you? A. Yes, sir.

Q. I will ask you if you know the Elliott Association claim? A. Yes, sir.

Q. Who staked that claim, do you know?

A. I and Fox and Elliott staked it.

Q. What did you do towards staking a claim?

A. I run the lines and set up some of the stakes, and Fox done the same: He wrote the location.

Q. Do you know what was on the location?

A. Oh, I couldn't repeat the full location now.

Q. How many stakes were set out, between you?

A. There were five.

Q. Where were they set in relation to the claim?

A. There is an initial stake in the center of the claim, and four corners. [28]

(Testimony of C. Purdy.)

Q. What else did you do towards staking the Elliott Association?

A. That is about all; locating it, running the lines, and putting up the stakes.

Q. Well, you put stakes around part of the ground: Tell the Court and jury what you did to the ground.

A. Well, I helped sink four shafts on it, as far as we could get.

Q. I am asking you in regard to the staking of the claim; What did you do while you were on the ground, in regard to staking it?

A. I helped run the lines.

Q. How far up Boulder creek did you go, and what did you do when you got up there?

A. About two and a half miles, I guess. I run the lines on a claim later called the Elliott Association.

Q. Did you start at the initial post? A. Yes.

Q. Then which way did you run, and how far?

A. I think I run in a westerly direction.

Q. How far did you go in a westerly direction?

COURT.—I think you had better fix the location of this initial stake.

Mr. TAYLOR.—He says that is about two and one-half miles up Boulder creek.

A. Run thirteen hundred and twenty feet.

Q. Thirteen hundred and twenty feet: What limit was this on Boulder creek? A. On the right limit.

Q. On the right limit?

A. Well, part of the claim covered the right limit—the biggest part.

(Testimony of C. Purdy.)

Q. Tell the Court and jury where your initial stake was put?

A. It was put on the right limit of Boulder creek, about two and a half miles from the mouth.

Q. Then in what direction did you go?

A. I run in a westerly direction, I believe, thirteen hundred and twenty feet.

Q. What did you do then?

A. I run twenty-six hundred and forty feet in a southerly direction, I believe.

Q. State if you put anything at the point thirteen hundred and twenty feet from your initial post?

A. Yes, put a corner stake.

Q. Did you mark that corner stake? A. Yes.

Q. Then which direction did you go, and how far?

A. Southerly direction, twenty-six hundred and forty feet.

Q. What did you do then?

A. Another corner post. [29].

Q. Then which direction did you go?

A. I went in an easterly direction.

Q. At right angles? A. Yes.

Q. How far along did you go then?

A. Well, twenty-six hundred and forty feet—as near as we could get to it.

Q. What did you do then?

A. Another corner stake.

Q. Then where did you run?

A. Another twenty-six hundred and forty feet, at right angles.

Q. Then where did you go?

(Testimony of C. Purdy.)

A. I run at right angles again to the initial stake.

Q. Did you blaze out those lines, or cut out those lines at all? A. Yes, we cleaned the lines out.

Q. Did you name that location of yours?

A. Well, I didn't name it myself.

Q. Did you see it named, and what was it?

A. Yes, the Elliott Association.

Q. Do you remember in whose name it was staked?

A. I see later, on the books, it was staked in Fox's name.

Q. Your name was on that stake, was it?

A. Yes, sir.

Q. Who wrote the location notices on that stake?

A. Joe Fox.

Q. And you saw him do it, did you?

A. No, I don't believe I was there when he wrote it: I was on the claim though.

Q. You say you don't remember whose names were on the stakes?

A. I can remember some of them: I don't remember them all.

Q. Will you state those whom you remember?

A. There was Day, and John Elliott, Fox and Gray—Bill Gray—I don't remember any more—and my own.

Q. How many acres were in that claim?

A. There was supposed to be a hundred and sixty.

Cross-examination by Mr. RODEN.

Q. You were not present when the names were put on any of the stake you didn't see anybody write any of the names on the stakes itself?

(Testimony of C. Purdy.)

A. No, I don't believe I did: I can't just remember. I was there very shortly after.

Q. And when you came there—that's when you found the names? A. Oh, I was there before—

Q. (Interrupting.) I mean when you came there shortly after? A. Yes. [30].

Q. Now how they came on there, you don't know: you couldn't swear as to how they got there, except as to what some one may have told you. You didn't see them put on there, did you?

A. No, I didn't see them—I don't think I saw them—I don't just remember—I was right close by them. I know Fox wrote them—I was right close there.

Q. Well, you may have been, or may not?

A. I know I was right close.

Q. Now that is all you know about the location of that claim, as far as you have testified; that's all you know about it? A. Yes.

Redirect Examination by Mr. TAYLOR.

Q. As a matter of fact you know those names were on the stake, don't you?

A. Yes, I know they were on the stake.

(Testimony of witness closed.)

[Testimony of J. F. Fox, for Plaintiff.]

J. F. FOX for the plaintiff, testified as follows:

Direct Examination by Mr. TAYLOR.

Q. Where were you on or about the middle of December, 1909, and what were you doing?

A. Well, to the best of my memory I was on

(Testimony of J. F. Fox.)

Boulder, staking a piece of ground.

Q. What did you do when you staked it?

A. I first put the initial stake, and wrote the names and wrote the location.

Q. Could you state at this time what names you put on the stake?

A. I don't just remember all the names I put on, at the present time.

Q. And what did you do after you had written the names?

A. Well, Mr. Purdy and Mr. Elliott was up there with me, and I told them to go six hundred and sixty feet to the right limit of the claim and put up the corner, and they were doing that while I was writing the initial. After they got through, I helped them run out the line for that corner, and then we went from that corner and put up the left limit corner six hundred and sixty feet from the initial stake; and then we run our line downstream on the left limit, and established another corner. It came night on me at that time, and I had to go back to Two Below on Boulder to my cabin, and Mr. Purdy and Mr. Elliott finished staking the ground, and running the lines and running up the other corners.

Q. Were you ever on that ground after that?

A. Yes, sir, several times.

Q. Did you ever see the other corners they put up?

A. Yes, sir.

Q. What did you do towards marking the boundaries, if anything?

A. I see that there was five corners there, and the

(Testimony of J. F. Fox.)

lines blazed out all round the piece of ground.

Q. What did you call the claim?

A. The Elliott Association. [31]

Q. Did you ever record it? A. Yes, sir.

Q. You say you established a corner six hundred and sixty feet on each side?

A. Yes, from the center stake.

Q. What is the size of the claim?

A. Thirteen hundred and twenty feet by five thousand two hundred and eighty.

Q. That is to the best of your recollection?

A. That is an eight-claim association.

(Testimony of witness closed.)

[**Testimony of Geo. W. Albrecht, in His Own Behalf (Recalled).]**

GEO. W. ALBRECHT, plaintiff, recalled, further testified in his own behalf as follows:

Direct Examination by Mr. TAYLOR.

Q. I will ask you if you are custodian of the records of Otter Precinct, and have you, as such custodian, a record of the Elliott mining association on Boulder creek?

A. (Witness consulting records.) I am custodian. Volume one, page 221, appears under index number 762, filed for record at the request of J. F. Fox, on the 4th day of February, 1910, at 30 minutes past 12 P. M. (Reading.) "Notice of Location. Notice is hereby given that the undersigned has located 160 acres of placer mining ground situate in Otter Recording District of Alaska, on Boulder

(Testimony of George W. Albrecht.)

creek, a tributary of Otter creek, to be known as the Elliott claim, described as follows to wit: Commencing at initial stake and running in a westerly direction 1320 feet; thence 2640 feet in a northerly direction; thence 2640 feet in an easterly direction; thence 2640 feet in a southerly direction; thence 1320 feet in a westerly direction to initial stake. Gold discovered February 15, 1910. Located December 16, 1909. J. Elliott, J. E. Miller, J. Day, Fred Church, J. F. Fox, C. Purdy, Wm. Gray, J. Raap, Locators, by J. F. Fox, agent. Witness: C. Purdy."

(Witness excused.)

[**Testimony of J. F. Fox, for Plaintiff (Recalled).]**

J. F. FOX, recalled, further testified for the plaintiff as follows:

Direct Examination by Mr. TAYLOR.

Q. I would like to ask you what you did with your interest in that claim?

A. I sold my interest to William Day, and also Charlie Purdy. He was interested with me at the time I sold.

Q. I will hand you a paper; do you recognize that paper? and is that your signature?

A. Yes, I recognize the paper, and that is my signature.

Q. You stated last evening that you staked a mining claim on Boulder creek, which you called the Elliott Association? Just describe the boundaries of that location again, will you.

(Testimony of J. F. Fox.)

A. Describe that location? I made a mistake in describing it. [32]

Q. You can correct it.

A. I will state it correctly, as I saw it. We started on the upstream line, put up the initial stake in the center of the claim, and ran thirteen hundred and twenty feet towards the right limit of the claim, and put up the corner stake. Mr. Elliott and Mr. Purdy done that while I was writing.

Mr. RODEN.—We object to that testimony, unless he actually saw that.

(To Witness.) Did you see them do that?

A. Yes, I went over to the corner. I went over to the initial stake. I helped to run the line to that corner. I went to that corner myself.

Mr. RODEN.—(To Witness.) You helped them run the line?

A. Yes, between the initial stake and the corner.

Q. (Mr. TAYLOR.) Then what did you do?

A. Then we went to the left limit and put up another corner thirteen hundred and twenty feet from the initial stake—that is, guessing the distance—we didn't measure the distance.

Q. I understand. Then what did you do?

A. Then we ran our line down twenty-six hundred and forty feet, and established another corner—that is, downstream,—on the left limit of the claim.

Q. And then?

A. Night came on us, and we went home to Otter creek.

Q. Did you go back?

(Testimony of J. F. Fox.)

A. I didn't, no. Mr. Elliott and Mr. Purdy finished the location alone, the staking of it.

Mr. RODEN.—We object to that. (To witness.) Did you see them do it?

A. I didn't, but I was on the ground afterwards.

Q. Did you see the other stakes after they were set out?

A. Yes I saw them after they were set out.

Q. And you know there were four stakes, one on each corner of that claim?

A. Yes and the initial stake.

Q. One on each corner and the initial stake. Now what did you do towards marking the boundaries, or blazing the lines?

A. Well I helped them run the upper end line, and the left limit side line, adjoining the creek claim on Boulder.

Q. You say you blazed some of the lines yourself?

A. I helped blaze the upper end line and one side line—left limit side line.

Q. Did you make a discovery of gold on that claim? A. Yes, sir.

Q. State under what circumstances?

A. I don't know what date I went up there: The boys had been working there some time when I went up to see them again. They had sunk one hole down until they got drowned out. When I was there they was working on the third hole. They got the second hole as far as they could, on account of water, and it was in the second hole I panned.

Q. You say you panned: what did you find?

(Testimony of J. F. Fox.)

A. I found gold.

Q. How many pans did you pan there, and what was in them?

A. To the best of my memory I panned three pans, and there was a little gold in all three of the pans.

[33]

Q. You say you copied the location notice; what did you do with that location notice?

A. Well, I brought it down there and recorded it, and afterwards I had it out to my cabin on Otter creek. Last fall when I went Outside I took the papers with me, and I don't know whether I took it with me or not.

Q. I will ask you if you have made diligent search for that location notice?

A. I went out there, at your request, and looked for it, and didn't find it.

Q. Do you know where it is? A. I don't.

Mr. TAYLOR.—Now, may it please the Court, seeing that the original location notice is lost, I would offer in evidence the record of that location.

COURT.—It has been received has it not?

Mr. TAYLOR.—We ask that it be received in evidence for the purpose of establishing the location.

Q. I will ask you where does Boulder creek lie, with relation to Granite creek? and how far away?

A. It lies across the ridge, in a westerly direction; This pup that we staked on heads up pretty well against a branch of Granite creek. I never went across there to Granite myself, so I don't know what distance it would be across from the head of Boulder

(Testimony of J. F. Fox.)

to the head of Granite.

Q. And you say Boulder creek flows into Otter?

A. Yes, sir.

Q. Have you seen any gold on Otter creek?

A. Yes, sir.

Q. There is gold on Otter creek, is there?

A. Yes, sir.

Q. Did you have any work done on that claim in 1910? A. Yes, sir.

Q. Do you know what work was done there?

A. I wasn't up there when the boys quit work? I was up there probably a month after they started in there.

Q. What did you see up there?

A. They started up a drain, and when I was there they had run it up to the best of my knowledge, from a hundred and fifty to two hundred feet. I didn't measure the ground—just looked at it. That would be my judgment of it.

Q. How deep was the drain?

A. Well, they started at the surface at the lower end, and when I was there the upper end was down ten feet from the surface.

Q. How long have you been mining?

A. Well, I can't say about mining; I have been mining some and prospecting ever since 1897, in this country.

Q. I will ask you if the discovery of gold that you made on Boulder creek was such as, in your opinion, would warrant you putting up further work or money in the prospecting of that claim.

(Testimony of J. F. Fox.)

A. Yes, sir, I had more work done under that head.
[34]

Q. Now, I will ask you, Mr. Fox, what induced you to stake that claim out there?

A. Well, to the best of my judgment, I was satisfied there might be some pay on that creek.

Q. Have you altered that opinion?

A. I haven't changed my opinion in regards to there might be pay on that creek yet.

Q. You stated yesterday, Mr. Fox, that you sold your interest; I will show you an instrument, and ask you if this is your signature? (Submitting document to witness.)

A. Yes, sir, this is my signature here, in two places.

Q. What do you mean by that?

A. I located for J. E. Miller and W. A. Gray on power of attorney and when I signed this as a deed, I signed "J. E. Miller and W. A. Gray, by J. F. Fox, attorney in fact."

Q. You had that power of attorney, did you?

A. Yes, sir.

Cross-examination by Mr. RODEN.

Q. Now who was up there with you and made that location?

A. Mr. John Elliott and Mr. Charley Purdy.

Q. And you say you located for whom up there—for yourself and besides whom?

A. Myself and W. A. Gray and—

Q. (Interrupting.) Who is this man Gray?

(Testimony of J. F. Fox.)

A. Him and Dave Edwards have a store over at Cripple. He is a partner of Dave Edwards.

Q. Ever been in this section of the country?

A. Yes.

Q. Was he in this section at the time you were up there? A. Yes.

Q. What was he doing up there?

A. Looking for ground, the same as I was.

Q. I suppose he gave you an interest for staking for him? A. Yes, sir.

Mr. TAYLOR.—Object to that as not proper cross-examination.

(After argument.)

COURT.—I think he has a right to inquire into the circumstances. The objection is overruled.

Q. I suppose he promised you an interest for staking for him?

Mr. TAYLOR.—Just a moment. We object to that as incompetent, irrelevant and immaterial.

COURT.—The objection is overruled.

Mr. TAYLOR.—We take an exception, if your honor please.

Q. (By Mr. RODEN.) Now you say you had an understanding with Mr. Miller for a half interest in that claim.

A. No, sir, you asked about Gray. [35]

Q. We were talking about Gray? A. Yes.

Q. Did you get an interest from him?

A. I got the equivalent from him.

Q. What did you get?

A. I sold his interest with the balance.

(Testimony of J. F. Fox.)

Q. And you got half of his money?

A. He wouldn't accept any of it.

Q. He wouldn't accept any of it?

A. No, sir, he let me have that for the work I did on the ground.

Q. For the staking? A. Yes.

Q. It was understood that you were to get half before you staked?

A. Yes, sir, that was agreed between us.

Q. And Gray was over there at the time?

A. No, he was over here at the time I located.

Q. Now you also located for Mr. Miller, did you?

A. Yes, sir.

Q. Who is this man Miller?

A. He is an old friend of mine from the Outside.

Q. That isn't the man they call Tom Miller?

A. No, sir.

Q. He has never been in Alaska? A. No, sir.

Q. Now did you have a written power of attorney from him when you located? A. Yes, sir.

Q. Did you have any understanding with him as to what you should receive for your services?

A. No, sir.

Q. Now you also sold his interest, didn't you, under your power of attorney. A. No, sir.

Q. Now did you pay him for that? A. No, sir.

Q. Now is there anyone else you staked for?

A. Nothing, only writing the names.

Q. Now you went upon that ground some time in December, 1909, didn't you and made this location?

A. Yes, sir.

(Testimony of J. F. Fox.)

Q. Now what kind of ground is that up there, I mean so far as being timbered and so forth is concerned?

A. Well, there is quite a lot of timber, inside the boundaries of our lines, if you allow our lines as I show them here. [36]

Q. Pretty heavily timbered, isn't it?

A. One side of the claim is, yes.

Q. Which side is that? A. The right limit.

Q. Now that ground covers the bench, doesn't it?

A. Yes, part of the bench.

Q. Now what is the formation of that ground?

A. The rock formation—

Q. Yes?

A. Well, the gravel shows granite, slate, porphyry.

Q. Is there any gravel on the ground? A. Yes.

Q. What kind of gravel?

A. Well, the top surface shows quite large boulders, a mixed lot of formation, granite, slate, and porphyry and other rocks.

Q. Now you say you have not changed your opinion as to the value of that ground as a mining claim?

A. No, sir, I didn't say as to a mining claim; I said as to being gold in paying quantities.

Q. As to being what?

A. To being gold on the ground in paying quantities. That is, I haven't changed my opinion as to being gold on the ground that would pay to work.

Q. You still think there is a chance?

A. Yes, sir.

Q. What makes you think so?

(Testimony of J. F. Fox.)

A. Well, simply on account of locality, as it lies there.

Q. Well, what locality does it lie in?

A. It lies—the formation is cut by the granite and slate and a porphyry formation, just the same as it is on Otter creek.

Q. Well, now, it lies practically square to Otter creek doesn't it at right angles? A. Yes, sir.

Q. Now you formed that idea early in 1910?

A. Yes, sir.

Q. And when were you on the claim again after that?

A. I don't know just what month it was. I was in there in the spring of the year, after water was running.

Q. That would be probably April or May, 1910?

A. I wouldn't be certain of the date.

Q. Did you ever do any work on that claim yourself?

A. No, sir—that is, you mean work as mining?

Q. Was there anyone on the claim in 1910 when you went back there? A. No, sir. [37]

Q. Now do you know of any mining operations that have been carried on on that claim since 1910? Did you do any mining work, that you know of, after say the first day of May, 1910?

A. There was a lay let on that claim after the spring of 1910.

Q. When was that lay let, and who had the lay?

A. I couldn't tell as to the date; I couldn't tell the party's name—and still I signed the lease.

(Testimony of J. F. Fox.)

Q. Do you know whether or not he went into possession of the ground? A. I don't.

Q. At the time you sold, where were you when that deal was made, were you on the claim?

A. No, sir.

Q. Do you know whether or not any of your associates in that claim have done any work since you were there in, say, May, 1910? A. No, sir.

Q. You say you sold to Day?

A. Yes, sir, sold to Day in the first place.

Q. Have you any knowledge of any work of any kind being done on that claim? A. Yes, sir.

Q. What is it, and who did it?

A. Cutting the timbers, Mr. Day.

Q. Mr. Day is one of the locators of that claim, the Elliott Association? A. Yes, sir.

(Witness excused.)

**[Testimony of Charles Purdy, for Plaintiff
(Recalled).]**

CHARLES PURDY, recalled, further testified in behalf of plaintiff, as follows:

Direct Examination by Mr. TAYLOR.

Q. What work did you do towards blazing the lines out on this Elliott Association?

A. Well, it appears to me I blazed one side and one end line out after Mr. Fox had gone away, I and Elliott.

Q. Have you seen the whole of these stakes?

A. Yes.

Q. When did you see them last?

(Testimony of Charles Purdy.)

A. Well, I see them in the fall of 1910.

Q. You have sold your interest in that claim?

A. Yes, sir.

Q. I will hand you an instrument, and ask you if you recognize that, is that your signature?

A. Yes, sir.

Mr. TAYLOR.—Plaintiff offers in evidence a deed from Charles Purdy to W. R. Day, of an undivided one-eighth interest in and to the Elliott Association.

[38]

Mr. RODEN.—No objection.

(Plaintiff's Exhibit "B.")

Cross-examination by Mr. RODEN.

Q. Now as I understand you at the present time, that claim is twenty-six hundred and forty feet square? A. Yes.

Q. Or at least supposed to be? A. Yes.

Q. And you were mixed up in that a little last night? A. No, I wasn't.

Q. Now when you saw those stakes in the fall of 1910, what stakes did you see at that time?

A. I see the whole five stakes.

Q. Now what kind of land is that embraced within these stakes, I mean as far as being timbered or brush is concerned, or anything like that?

A. Oh, there is some brush covering most of it, and there is some quite heavy timber on it.

(Witness excused.)

[Testimony of W. R. Day, for Plaintiff (Recalled).]

W. R. DAY, recalled, further testified on behalf of plaintiff as follows:

Direct Examination by Mr. TAYLOR.

Q. What is your occupation and where are you working now?

A. Laboring man, working for George Riley.

Q. Is Mr. Riley the defendant in this action?

A. Yes, sir.

Q. I will ask you if you know the Elliott Association on Boulder creek; were you ever on there; and if so when?

A. Yes, I know, I was there in 1909, and on there in 1910, and on there in 1911 at different times.

Q. You were included among the names of the stakers of that claim, were you not? A. I was.

Q. I will show you a bill of sale, and ask if you recognize it. A. Yes, sir.

Q. I will ask you if you signed that instrument?

A. I did.

Q. Is that your signature on there?

A. That is my signature.

Q. Did you sign anybody else's name on there?

A. I did.

Q. Whose name did you sign?

A. John Raap's and Fred Church's. [39]

Q. You had their power of attorney, did you?

A. I had.

Q. I will ask you if you saw John Elliott sign that?

A. I did.

(Testimony of W. R. Day.)

Mr. TAYLOR.—If Your Honor please, plaintiff offers in evidence a bill of sale from W. R. Day, John Raap, Fred Church, J. E. Fox, W. E. Gray, J. E. Miller and John Elliott, to Raymond Blais and Ronald Blais, of seven-eighths interest in the Elliott Association, right fork of Boulder Creek.

Mr. RODEN.—To which, if Your Honor please, we object, for the reason that the purported paper, desired to be offered in evidence recites on its face that it is a bill of sale, and if it is to take the place of a deed, it is not executed with such formalities as are required by law, for the reason, first: that it has not been shown that W. R. Day had any interest in the Association Claim; second: That it has not been shown that John Raap constituted or authorized anybody to convey any property, and particularly to convey any real estate of which he was the owner, to any person; third: That it has not been shown that J. E. Miller and W. E. Gray authorized any person to convey any real estate that they, or either of them, might be possessed of in the Territory of Alaska, or anywhere; and, lastly: That this purported transfer is not executed as required by law, for the reason that it purports to convey an interest in real estate, and execution thereof has never been acknowledged before a notary public, or before any officer authorized to take any acknowledgment, and that the execution thereof has never been proven before any such officer by any of the witnesses thereto. For these reasons we object to the introduction of it.

Mr. TAYLOR.—If the Court please, I hardly

(Testimony of W. R. Day.)

think the defendants here are in a position to attack that collaterally inasmuch as the parties who made the deed are the ones who are testifying to it, nobody else can object.

COURT.—I think this witness did testify in regard to the power of attorney, without objection on your part. I suppose that is sufficient—and that Mr. Fox did also. If you had objected at that time, it would have been necessary to have shown a written power of attorney. I think each of them testified, without objection, that they had power to make this transfer.

(After further argument.)

COURT.—This is certainly an informal instrument, but I think it may be admitted. I think these requirements as to formality relate more particularly to requirements of record.

Mr. RODEN.—We take exception to the ruling of the Court at this time, admitting the bill of sale.

(Bill of Sale marked "Plaintiff's Exhibit A.")
[40].

[Testimony of F. L. Kehoe, for Plaintiff.]

F. L. KEHOE, for the plaintiff, testified as follows:

Direct Examination, By Mr. TAYLOR.

Q. I hand you a paper, and ask you if you recognize that? A. I do.

Q. You are the acknowledging officer in that jurat, are you? A. I am.

Q. Did you see that paper executed? A. I did.

Q. I will ask you if that is the signature of Ronald

(Testimony of F. L. Kehoe.)

Blais, and of Raymond Blais? A. It is.

Q. You acknowledged the instrument?

A. I did, yes, sir.

Mr. TAYLOR.—If the Court please, we offer in evidence a quit-claim deed, dated 31st July, 1911, from Raymond Blais and Ronald Blais to W. R. Day, conveying all the right, title and interest of the said parties of the first part to the parties of the second part, in and to that certain Association Placer Mining Claim known and described as the Elliott Association.

Mr. RODEN.—We object to the admission of it, for the reason that it has not been executed as required by law. It is not acknowledged by a notary public or other officer authorized to take acknowledgment, and the instrument has never been proved by any subscribing witnesses as having been executed.

COURT.—This appears to have been acknowledged. It may be received.

(Plaintiff's Exhibit "C.")

[**Testimony of W. R. Day, for Plaintiff (Recalled).]**

W. R. DAY, recalled, further testified on behalf of the plaintiff as follows:

Direct Examination, By Mr. TAYLOR.

Q. I will show you another instrument, Mr. Day, and ask you if you recognize that, and is that your signature? A. Yes, it is.

Q. You signed this? A. Yes.

Q. To whom did you give that deed?

A. The deed is to George W. Albrecht.

(Testimony of W. R. Day.)

Q. Did you give it to him? A. Why, I think so.

Mr. RODEN.—We move that the answer be stricken out. It doesn't matter what the witness may think.

COURT.—The motion is denied. It may stand for what it is worth.

Mr. TAYLOR.—If the Court please, I think that this will necessitate me taking the stand myself, inasmuch as I am the acknowledging officer. [41]

[Testimony of Charles E. Taylor, for Plaintiff.]

CHARLES E. TAYLOR, for the plaintiff, testified as follows:

WITNESS.—I want to say that the instrument purporting to be a deed from W. R. Day to George W. Albrecht, conveying all of the interest of Day in and to the Elliott Association claim on Boulder creek, was signed, sealed and delivered by Day to Albrecht in my presence.

Mr. TAYLOR.—I now wish to offer the deed in evidence.

(Plaintiff's Exhibit "D.")

[Testimony of W. R. Day, for Plaintiff (Recalled).]

W. R. DAY, resuming the witness-stand.

Cross-examination by Mr. RODEN.

Q. Where did you make that deed that has just been admitted in evidence?

A. Why, I made it in the office of Charles E. Taylor, I think. I think I did.

(Witness excused.)

[Testimony of Geo. W. Albrecht in His Own Behalf
(Recalled).]

GEO. W. ALBRECHT, recalled, further testified in his own behalf as follows:

Direct Examination by Mr. TAYLOR.

Q. I will ask you if you have seen that instrument before? and from whom did you receive it?

A. W. R. Day.

Q. I will ask you what you did in regard to taking possession under this deed?

A. I think the first act was to record the deed. I never have attempted to take actual physical possession of the property. I have been on the property—examined the lines, and had the assessment work performed, for which I paid.

Q. When was this?

A. Which one of the acts do you refer to?

Q. When did you have the assessment work performed? A. December of 1912.

Q. As Recorder, have you got a record of that assessment work being done? A. Yes, sir.

Q. Can you produce that record?

A. I think so.

(Witness procures record.)

Q. I will ask you to look at that instrument and identify it. (Submitting.) A. I do.

Mr. TAYLOR.—If the Court please, we offer in evidence an affidavit of labor of C. C. Chittick, as follows: (Reads affidavit:) “Territory of Alaska, Fourth Division, Otter Precinct, ss. C. C. Chittick being first duly sworn, on oath says: That he makes

(Testimony of George W. Albrecht.)

this affidavit for the purpose of complying with the law as to the performance of [42] annual labor, and of filing and recording proof of the same, for the year 1912. That the mining claim upon which labor has been performed and improvements made is the Elliott AssociationPlacer Mining Claim at the head of Boulder creek, a tributary of Otter creek, which flows into the Iditarod River, in said above Otter Precinct. That this affiant and A. A. Chittick did ten day's work upon said claim, cutting brush and trying for prospect holes. That said work was done and improvements made between the 25th day of November, 1912, and the 9th day of December, 1912, both inclusive. That George W. Albrecht paid Two Hundred Dollars (\$200.00) for said work and improvements. C. C. Chittick. Subscribed and sworn to before me this tenth day of December, 1912. George W. Albrecht, Notary Public in and for the Territory of Alaska, residing at Iditarod."

Q. Is that recorded? A. Yes, sir.

Q. In what book?

A. Volume One of Annual Labor.

Mr. RODEN.—We object to its introduction in evidence, because it is not such an affidavit as the law contemplates, and since it is not, it is not entitled to record, and the party causing it to be recorded secures no right or benefit under it whatsoever.

COURT.—The affidavit itself is, of course, inadmissible.

Q. In what book has this been recorded?

A. Volume One of Annual Labor.

(Testimony of Geo. W. Albrecht.)

Mr. TAYLOR.—We offer the Record, Page Thirty-seven.

COURT.—Well, it has not been identified as a record. The record itself must be offered, or else a certified copy.

Mr. TAYLOR.—We offer the record itself.

COURT.—I understand Mr. Roden's objections were as to the contents of the instrument. It doesn't conform to the statute in regard to affidavits of labor.

Mr. RODEN.—If he simply wants to introduce it as a record, he may do so. That is all right. But we object to its introduction because it cannot have any possible influence upon the issues in this case, and it just simply burdens the record uselessly. It can have no force or effect whatsoever—the introduction of the record.

COURT.—It seems to me that since the record is offered as a record that the affidavit does not contain the different matters that are required to be contained in an affidavit of labor.

Mr. TAYLOR.—We offer the record of that affidavit of labor.

COURT.—The objection is sustained as to the offer.

Mr. TAYLOR.—We note an exception.

(Witness excused.) [43]

[**Testimony of Robert Mann, for Plaintiff.**]

ROBERT MANN for the Plaintiff, testified as follows:

Direct Examination by Mr. TAYLOR.

Q. What is your occupation? A. Laborer.

(Testimony of Robert Mann.)

Q. What were you doing in the fall of 1911—and winter, and where?

A. The fall of 1911 I was cutting wood on Boulder creek.

Q. Do you know where the Elliott Association is on Boulder creek? A. Yes.

Q. Who were you cutting wood for in 1911?

A. Well, I cut for Mr. Riley in the fall. When I went to cutting I was cutting for myself.

Q. With whom were you cutting?

A. A fellow by the name of Jim Furlong and Jim Kelly.

Q. You were partners, were you?

A. No, sir, nothing but the grub.

Q. You were cutting together, were you?

A. No sir; cutting wood in the same locality, but each one cutting for himself.

Q. Where were you cutting wood?

A. Well, I was cutting on the head of Boulder creek.

Q. Did you cut wood on the Elliott Association?

A. I cut wood on what purported to be the Elliott Association afterwards, but I didn't know it was the Elliott Association when I went to cut there.

Q. How much wood did you cut up there?

A. A hundred and thirty-eight cords, as near as I can remember.

Q. Did you see anybody else cutting wood on the Elliott Association at that time?

A. Yes, sir, they told me it was the Elliott Association.

(Testimony of Robert Mann.)

Q. Who was cutting there?

A. A man by the name of Johnson, a man by the name of Roberts, a man by the name of Murdoch, and a man by the name of Jones, and Furlong and Kelly and myself.

Q. Furlong was cutting on it? A. Yes.

Q. And Kelly? A. Yes.

Q. What became of the wood you cut?

A. I sold it to Mr. Riley.

Q. What did it cost; how much did it cost—that wood—to cut it?

A. Well I didn't make any more than wages. I got six dollars a cord for it.

Q. And was that wood delivered to Riley & Marston?

A. It was delivered to Riley & Marston on the ground. [44]

Q. Did you cut for Riley & Marston?

A. I promised to sell my wood to Riley & Marston for his going security for my groceries at the store, I promised to sell him wood—I had been cutting for some time.

Q. Didn't you say awhile ago that you started to cut wood for Riley & Marston?

A. No, sir, I didn't say anything of the kind.

Q. When did you start to cut wood up there?

A. Along the latter part of March, 1911.

Q. When did you get there, on that particular claim? A. September, 1911.

Q. Did you ever have any conversation with Riley

(Testimony of Robert Mann.)
& Marston about the wood; as to any probable law suit?

A. I don't remember that I ever did. Oh, I did too.

Q. Kindly state to the Court and Jury what that conversation was.

A. There was a man by the name of Blais came there, and he claimed the ground, and asked me if I wouldn't let him have the wood, and he was going to get a team that fall and deliver it all and sell it himself; that he could sell all the wood there was up there; and I believe I spoke to Riley about it at the time, or shortly afterwards, and asked him if he thought there was going to be any trouble about it, and he said he didn't think there was. Blais was hauling and cutting the wood for himself for sale. As near as I can remember the conversation, that is the only conversation I had in regards to it.

Q. Did you have any understanding with Mr. Riley or Mr. Marston as to what position you would be in, if there was any trouble?

A. Not that I remember of.

Q. I will ask you if that is all the conversation you ever had with Mr. Riley regarding the matter?

A. Later in the fall we had several conversations. He said he was being sued for taking the timber off a mining claim, and he asked me if I ever found any prospects up there, if I ever prospected any around the old shafts, and I told him I had, and he asked me if I ever found anything, and I told him nothing as far as I had seen.

(Testimony of Robert Mann.)

Q. What, if anything, did Mr. Riley tell you?

A. He told me he was going to get some man, and go up and pan around those holes, and asked me to show them where they were.

Q. Was anything said in regard to this law suit he was having?

A. He said he thought he was going to have a law suit, at the time that he went up.

Q. When was this?

A. That was in 1912, the fall of 1912.

Q. Did he say anything to you when you were on the ground cutting wood, as to any probable trouble there would be about it?

A. I was on the ground cutting wood then.

Q. In 1912? A. Yes, sir.

Q. That was in the early spring, wasn't it?

A. That was in the fall. I was there two years, lived in the same cabin two years. [45]

Q. Was this this last fall that you were up there?

A. Yes, sir.

Q. Cutting wood? A. Yes, sir.

Q. Do you know if Mr. Kelly was working under the same conditions that you were?

A. Yes, he was.

Q. Do you know if Mr. Furlong was working under the same conditions? A. Yes, sir.

Q. You say you promised to sell the wood to Messrs. Riley & Marston, if they would secure your grocery bills? A. I did.

Q. Did they secure your grocery bills?

A. Yes, sir.

(Testimony of Robert Mann.)

Q. When did you sell your wood to Messrs. Riley & Marston?

A. Do you mean when I got paid for it.

Q. When did you sell it to them?

A. Well, I sold it to them the 15th of October, or along between the 15th of October and the first of November, 1911, the first time, and 1912 the second time. About the same time each year. I couldn't say exactly as to dates.

Q. And you were working for them with that understanding all the time. About how much wood did you sell to them in 1911?

A. One hundred and thirty-eight cords—one hundred and fifty-eight; it was either one hundred and thirty-eight or one hundred and fifty-eight. I know I had two or three different lots of it. I couldn't say for sure. Either a hundred and thirty-eight or a hundred and fifty-eight.

Q. Do you know when they took delivery of it?

A. They took delivery of it the time I sold it to them, the time they paid me for it.

Q. Do you know when the wood was taken off?

A. It was taken off in the winter of 1911—the winter of 1911 and the winter of 1912.

Q. What dates, do you remember?

A. I couldn't say as to the dates.

Q. Do you know the month?

A. Well, when the first heavy good sleighing came, but I couldn't say what month it was.

Q. It was pretty good sleighing, was it?

(Testimony of Robert Mann.)

A. Yes, it was good sleighing before they started in to haul. [46]

Cross-examination, by Mr. RODEN.

Q. You say you commenced cutting some time in March, 1911? A. Yes, sir.

Q. And you cut altogether a hundred and thirty-eight cords? A. The first year?

Q. Yes?

A. On that piece of ground. Further down the creek I bought some more timber.

Q. Now when you got up there, in March, 1911, did you survey and look around the place you were going to cut? A. Yes, sir I did.

Q. Now what did you find?

A. Well, I found a lot of piles of logs, and teams hauling off of there—two teams hauling off there.

Q. Do you know whose logs they were, or whose teams?

A. There was several large piles of logs, and there was teams hauling off of there.

Q. Do you know who was hauling them off?

A. I know one of the men—Lee Roby.

Q. For whom was he hauling, do you know?

A. I couldn't say.

Q. And you say you found Johnson cutting wood up there?

A. Yes, he came there the same time I did.

Q. Where did he cut?

A. Well, I suppose he was cutting on a portion of the Elliott Association, from the way I could trace the lines there.

(Testimony of Robert Mann.)

Q. And Roberts?

A. The same. He was cutting further up.

Q. And Murdoch?

A. He was cutting with Roberts; they were partners.

Q. And Jones?

A. Jones was cutting on what I supposed was the same piece of ground.

Q. Now you spoke about Blais being up there?

A. Blais showed me where the ground was. That was why I believed that Johnson and Jones and Murdoch and all those fellows were cutting on that ground. It was Blais showed me the ground.

Q. Blais pointed out the Elliott Association to you? A. Yes.

Q. And what did he say about this wood?

A. He asked if I would sell it to him, that he would get a team and haul it, and I told him no. I had been there several weeks before Blais ever came up there.

Q. Did Blais say anything about cutting the wood himself?

A. Yes, sir he told me he was going to cut it himself. [47]

Q. Now when you went up there to cut, did you have any understanding with Riley & Marston as to where, in what particular place, you were to cut wood? A. No, sir, I did not.

Q. Isn't it a fact that Riley & Marston never knew, or at least didn't know for a long time, where you were cutting wood?

A. I don't know that they ever knew until they

(Testimony of Robert Mann.)

came up to receive it. I never saw them on the creek.

Q. All the proposition was that you would sell your wood wherever you might cut it?

A. That I would sell it to them for six dollars a cord.

Q. So you were not their employee: you were not working for Riley, were you?

A. I didn't consider that I was, no, no more than he would expect me—he would be wanting me to work, to make sure he would get his money out of the supplies I was getting.

Q. Now you say you cut a hundred and thirty-eight cords of wood altogether that year?

A. Yes, sir—I think it was a hundred and fifty-eight—I couldn't say for sure, but it was in that neighborhood,—either a hundred and fifty-eight that I had and a hundred and thirty-eight that Kelly had, or it was a hundred and thirty-eight that I had and Kelly a hundred and fifty-eight.

Q. Now how much wood did you cut between the first day of October, 1911, and the first day of January, 1912?

A. I cut two hundred and two and a half cords.

Q. When did you cut?

A. From the time Riley & Marston received my cord wood in 1911 until the time they received it in 1912. The last year they received it—

Q. (Interrupting.) I am not asking you about the last year. I am talking about the first day of

(Testimony of Robert Mann.)

October, 1911, and the thirty-first day of January, 1912.

A. Oh, I understand now. Excuse me. I didn't cut any wood on the Elliott Association at all.

Q. Now the wood which you did cut between those two dates, where was that cut?

A. That was out on a little pup, away further down the creek, and from the right limit.

Q. Now let me ask you this question. Did Riley & Marston get a stick of wood off the Elliott Association Claim, between the first day of October, 1911, and the 31st day of January, 1912?

A. No, sir, they didn't.

Q. Not a stick? A. Not a stick.

Q. Do you know whether or not Riley & Marston received a stick of wood between these dates from Jim Kelly?

A. Jim Kelly didn't cut between those dates. He was through cutting. [48]

Q. Did they get a stick of wood that was cut between the first day of October, 1911, and the 31st day of January, 1912, from the Elliott Association Claim, that was cut by Jim Furlong?

A. No, sir, they didn't.

Q. So, in other words, you didn't cut a stick of wood on the Elliott Association between the first day of October, 1911, and the 31st day of January, 1912?

A. No, I was through cutting there then.

Q. Do remember what time in the month of Sep-

(Testimony of Robert Mann.)

tember, 1911 you quit cutting wood from the Elliott Association?

A. I am almost sure that I got through about the middle of September.

Redirect Examination by Mr. TAYLOR.

Q. What became of the wood that you did cut on the Elliott Association?

A. I sold it to Riley & Marston.

Q. When did they take it off there?

A. Sometime during the winter, in the first sleighing.

Q. How much did you cut on the Elliott Association?

Mr. RODEN.—We object to these questions, for the reason that they are no rebuttal testimony, and have already been answered. (After argument.)

COURT.—You may ask him again.

Q. How much wood did you cut on the Elliott Association? A. In the year 1911.

Q. In the year 1911.

A. I cut one hundred and fifty-eight cords, or one hundred and thirty-eight, I couldn't swear which, I could tell you very well which, if I looked at my book, I haven't got that book with me though.

Q. Do you know if Mr. Kelly cut any wood on the Elliott Association in 1911? A. Yes, sir.

Q. Did Mr. Furlong cut any wood on the Elliott Association in 1911? A. Yes, sir.

Q. Do you know what became of that wood?

A. Yes, sir.

Q. Where did it go?

(Testimony of Robert Mann.)

A. Riley and Marston bought it.

Q. When?

A. Between October and November, 1911.

(Witness excused.) [49]

[**Testimony of David Mutchler, for Plaintiff.]**

DAVID MUTCHLER, for the plaintiff testified as follows:

Direct Examination by Mr. TAYLOR.

Q. State your name. A. David Mutchler.

Q. And your occupation? A. Freighter.

Q. You are a member of the firm of Mutchler Brothers? A. Yes.

Q. Were you in the freighting business in 1911 and 1912? A. Yes, sir.

Q. I will ask you if you ever hauled any wood from Boulder Creek? A. I did.

Q. I will ask you, after looking at the map, if you know where the Elliott Association is? A. I do.

Q. I will ask you if, in the winter of 1911 and 1912, you hauled any wood for Riley & Marston from Boulder Creek? A. Yes, sir.

Q. Do you know who cut that wood that you hauled? A. Yes, sir.

Q. Who cut it?

A. Well, there was about six or seven different men cut it.

Q. Did you haul any wood that Mr. Mann cut?

A. Yes, sir.

Q. Do you know how many cords you hauled of that wood?

(Testimony of David Mutchler.)

A. Why, I think about one hundred and forty-nine cords of his wood.

Q. Did you haul any wood that was cut by a Mr. Kelly? A. I did.

Q. How many cords?

A. About one hundred and twenty-five, if I remember correctly.

Q. Did you haul any wood that was cut by Mr. Furlong? A. Yes, sir.

Q. About how many cords?

A. One hundred and fourteen, if I remember correctly.

Q. I will ask you if you can refer that diagram, and show the locality from which you hauled that wood?

A. Well, I would judge it would be about three miles up Boulder, from the mouth, where I hauled the wood from, on the left limit of Boulder.

Q. Who else had wood up there that you hauled for Riley & Marston?

A. Why, a man by the name of Jones had wood that we hauled for him way up at the head of the creek—in fact, it was pretty near up on the Caribou side. [50]

Q. Do you know the total number of cords that you hauled from the vicinity of that ravine?

A. Well, I wouldn't know exactly, but I would judge there was probably two hundred to two hundred and fifty cords hauled out from the vicinity of that ravine.

(Testimony of David Mutchler.)

Q. Did you haul the Furlong wood from that vicinity? A. Yes.

Q. And the wood cut by Kelly? A. Yes.

Q. And the wood cut by Mann from that vicinity?

A. Yes, but Furlong's wood was cut from away up on top of the hill.

Q. Have you any idea how much was way up on top of the hill?

A. Well, I should judge half of his was way up, pretty well.

Q. You got paid for hauling that, did you?

A. Yes.

Q. How much did it cost to take that wood away from there?

A. It cost him four dollars and a quarter a cord.

Q. Would you be willing to put that wood back for that price? A. I would not.

Q. What would be a fair value, a fair price, if you had to put that wood back again from the mouth of the creek upon that claim?

A. Oh, it would be worth probably twelve dollars a cord.

Cross-examination by Mr. RODEN.

Q. Now, Mr. Mutchler, do you know the lines of that so-called Elliott Association Claim?

A. No, sir, I don't.

Q. So you don't know whether Mann's wood was in the Elliott or not? A. I don't.

Q. You say Jim Furlong's half of his wood was way up on top of the hill?

A. Yes, sir, it was way up on the mountain--in

(Testimony of David Mutchler.)

fact, it was above the timber line, a good lot of it.

Q. You say about half? A. Yes, sir.

(Witness excused.)

[**Testimony of W. R. Day, for Plaintiff (Recalled).**]

W. R. DAY recalled, further testified on behalf of plaintiff as follows:

Direct Examination by Mr. TAYLOR.

Q. Did you ever see any notices to trespassers posted on there, on the Elliott Association?

A. I did.

Q. What year did you see them there?

A. In 1910—no, let me see, I don't know—well, it was the year that Mann and Furlong and Kelly were up there cutting. I don't know whether it was 1910 or 1911 now. [51]

Q. Did you see Mann, Furlong and Kelly cutting wood on the Elliott Association Claim?

A. I saw Furlong and Kelly cutting wood up there.

Cross-examination by Mr. RODEN.

Q. Now when was it the first time that you went on the Elliott Association?

A. I think it was in January, 1910?

Q. And who staked up there for you?

A. Joe Fox.

Q. And you furnished the names of Raap—and, was it Church? A. Yes, Fred Church.

Q. Joe Fox. At the time you asked him to stake for you, did you have any understanding with him as to whether or not he should receive any interest in that claim he was staking?

(Testimony of W. R. Day.)

Mr. TAYLOR.—We object to that as incompetent, irrelevant and immaterial.

COURT.—The objection is overruled.

Mr. TAYLOR.—Exception.

A. Why, there was a general understanding, between Fox and myself that wherever he got a chance to stake me in, and any of those names I furnished him, he would do so, and that I would do the same with him and some of his names.

Q. Well, did you have any understanding that he was to have a half interest of what he staked for you?

A. No.

Q. Now you furnished him the name of John Raap? A. Yes.

Q. You said you had a power of attorney?

A. Yes, I had a power of attorney?

Q. That was in writing? A. Yes.

Q. Now did you have any understanding with John Raap as to securing an interest in any claims you might acquire for him?

A. Why, no, I had his power of attorney to stake the claims, and handle them from start to finish.

Q. That was a general power of attorney?

A. Yes.

Q. To do whatever you pleased? A. Yes.

Q. And you did do whatever you pleased, under this power of attorney? A. Yes. [52]

Q. You sold it finally? A. Yes.

Q. Now where is Church?

A. I understood that he was dead.

Q. He is dead? When did he die?

(Testimony of W. R. Day.)

A. I don't know, but there was a young fellow by the name of Fred Church committed suicide in Ruby last winter, and I'm pretty sure that is the same fellow. That's as near as I can tell.

Q. You had his power of attorney, too?

A. Yes.

Q. That was in writing, too? A. Yes.

Q. A general power of attorney?

A. Yes, a general power of attorney.

Q. Now, did you have any understanding with Church to the effect that you were to have an interest in any mining claim that you might acquire for him under that power of attorney?

Mr. TAYLOR.—Objected to as incompetent, irrelevant and immaterial, and not proper cross-examination.

The COURT.—Objection overruled.

Mr. TAYLOR.—We note an exception.

A. No—no agreement with Church at all—just simply had his general power of attorney. Of course he expected, if we struck anything rich, that of course he was to get it.

Q. And you weren't to get anything?

A. I made no agreement with him, or anything of the kind. I had a general power of attorney to handle all the property staked for him—sell it, or give it away, or anything.

Q. And there wasn't any agreement that you were to get anything for your services?

A. No agreement.

Q. Not a word said?

(Testimony of W. R. Day.)

A. He wanted me to stake for him.

Q. And you did stake for him?

A. I staked, I believe—I don't know whether I ever did or not—yes—I staked one.

Q. Well, I mean you caused his name to be placed on this particular claim? A. Yes.

Q. And you sold it? A. Yes.

Q. Now, in January, 1910, how long did you stay on there on that occasion?

A. Oh, just long enough to walk around it.

Q. Well, say five minutes?

A. Oh, longer than that, I presume. [53]

Q. Now, was there anyone on there at the time?

A. Anyone working on it?

Q. Yes.

A. No, I didn't see—not the first time I was there.

Q. After this, when did you go on the claim again?

A. Well, I tell you, I couldn't say exactly.

Q. Well, about?

A. Oh, some time during that summer I was up there again, probably July—I don't think I was up there before July.

Q. Well, how long did you stay that time?

A. Well, I didn't stay very long that time.

Q. Just took a little look around?

A. Taking a little look around, yes.

Q. Was there anyone on the claim that time?

A. No, I don't think so.

Q. That would now be about July, 1910?

A. Yes, about July, 1910.

Q. When did you next pay your visit to the claim?

(Testimony of W. R. Day.)

A. Well, it would be very shortly after that, some where along about the latter part of July, or first of August.

Q. Well, did you spend any time at that time?

A. Yes.

Q. Did you do anything on the claim?

A. Nothing on the claim—well, I didn't—do you mean prospecting?

Q. Yes, any work?

A. I didn't do any prospecting.

Q. What did you do?

A. Well, I started in cutting some logs over there.

Q. And how long did you continue cutting logs?

A. Oh, about a month, maybe longer.

Q. And you sold these logs, didn't you?

A. Yes,

Mr. TAYLOR.—We object to that as incompetent.

COURT.—Overruled. The witness has already answered the question.

Mr. TAYLOR.—We note an exception.

Q. Now this was about in August, 1910?

A. Some time along about that.

Q. Did you ever do any mining on that claim?

A. No.

Q. Did you ever do any panning on that claim?

A. Yes.

Q. When did you pan?

A. On that first visit there in July, that I spoke about. [54]

Q. That was in that drain that had been run off there by Tom Towsley and Elliott?

(Testimony of W. R. Day.)

A. Yes, that is the drain.

Q. Now, you yourself never did anything at all in the diggings?

A. No, I never did any digging there.

Q. Nor did you employ anyone else to do any for you, did you?

A. Well, of course, Towsley—Joe Fox and I were interested in getting Tom Towsley to go up there. Both of us had made the agreement to pay Towsley to go up there.

Q. Did you agree to pay him, or was he supposed to have an interest?

A. Well, he was supposed to have an interest, I believe.

Q. Fox gave him a half interest for sinking that drain up there?

A. Yes, I was to go in with him.

Q. Now, you say you found some gold on this claim? A. Yes.

Q. Now, when you were up there, did you ever stay there over night on that claim? A. Yes.

Q. As a matter of fact, there never was any mining done there after the time Towsley got through with that drain?

Mr. TAYLOR.—We object to that as incompetent, irrelevant and immaterial.

COURT.—The objection is overruled. Counsel has a right to show the condition of the ground.

A. Yes, there was work done there after that.

Q. When was it done? A. It was done in 1911.

Q. By whom?

(Testimony of W. R. Day.)

A. There were two different parties.

Redirect Examination by Mr. TAYLOR.

Q. Counsel asked you if you did any panning up there on that claim? A. Yes.

Q. Where did you pan—inside the boundaries of the claim? A. Yes, sure.

Q. What did you find?

A. I found colors of gold.

Q. How many pans did you pan?

A. I believe it was four.

Q. Did you find gold in every pan? A. Yes.

(Witness excused.) [55]

[**Testimony of J. F. Fox, for Plaintiff (Recalled).**].

J. F. FOX, recalled further testified on behalf of plaintiff, as follows:

Direct Examination by Mr. TAYLOR.

Q. You have testified as to being the locator of the Elliott Association? A. Yes, sir.

Q. You placed the names of the locators on the initial post, did you? A. Yes, sir.

Q. I will ask you if you are acquainted with one W. R. Day? A. I am.

Q. How long have you known him?

A. I have known him since the winter of 1909.

Q. He is the same person who has been before the Court and Jury this afternoon?

A. Yes, sir; he is the same.

Q. I will ask you if this W. R. Day is the same person that you intended to stake, and did stake in, on the Elliott Association? A. Yes, sir.

(Witness excused.)

DEFENSE.

[**Testimony of W. M. Bristol, for Defendant.]**

W. M. BRISTOL, for the defendant, testified as follows:

Direct Examination by Mr. RODEN.

Q. What is your business?

A. Well, at the present time, lumbering and milling.

Q. How long have you been in the Territory of Alaska?

A. I have been in here since ninety-seven.

Q. What business have you followed since ninety-seven? A. Well, I followed mining first.

Q. How long did you follow mining?

A. Three years in Dawson.

Q. In what capacity?

A. Mined for myself, and worked lays.

Q. Ever been a prospector?

A. Prospected more or less ever since.

Q. Now, are you acquainted with a creek in this Precinct called Boulder Creek?

A. Yes, sir; I have lived there ever since the camp was struck.

Q. Ever since 1909, I suppose?

A. The spring of 1910.

Q. Now when did you first go on to Boulder Creek?

A. I went there in the spring of 1910. [56]

Q. Well, what time in the spring, would you say?

A. About the latter part of April.

Q. How did you happen to go there?

A. I went out with Mr. Towsley.

(Testimony of W. M. Bristol.)

Q. What is Mr. Towsley's first name?

A. Tom Towsley.

Q. Well, where did you go to?

A. We went to Boulder, to the Elliott Association, where he had been doing some prospecting and assessment work.

Q. What business relation exists between you and Tom Towsley? A. We were partners.

Q. You say you went to the Elliott Association?

A. Yes.

Q. What did you do there?

A. He had been running an open cut there, and he had his camp outfit, and I went to help him take it down, and looked over the cut.

Q. I wish you would describe the cut.

A. Well, they had one run, a cut about a hundred and twenty-five feet, commencing at the bottom and running up—when I was there, it might have been about the length of my arm up above—and they had kind of ground sluiced with water.

Q. Did you do any panning around there?

A. Yes, sir.

Q. Who did the panning?

A. I did the panning. Mr. Towsley panned again.

Q. Where did you pan?

A. I panned all along this cut from about forty feet from the face, just above where they had the rock piled up.

Q. Now, what did you take—a kind of an average of the face, or what?

A. Well, I was trying to find a prospect of any-

(Testimony of W. M. Bristol.)

thing along in there.

Q. Well, did you find anything?

A. No, sir, I didn't.

Q. How many pans did you pan?

A. I panned three.

Q. Now you say Tom Towsley panned also?

A. He panned four—tried to show me there was something there.

Q. What did Tom get?

A. Well, he got two colors.

Q. In the four pans?

A. Yes, in the four pans. Two pans he didn't get anything.

Q. Now, was anyone else on the claim at the time?

A. No, there was no one else there.

Q. Did you do anything more around there?

A. I cruised around, cruised the timber there.

[57]

Q. How did you happen to do that?

A. Well, I was laying out that lower line from the initial post, to see how much ground there was there.

Q. At whose request did you do that?

A. Mr. Towsley's.

Q. Now, what was going on upon that claim at the time you were up there?

A. There wasn't anything.

Q. Nobody there? A. Nobody there.

Q. Did you ever go on that claim afterwards?

A. Yes, sir.

Q. When was that?

A. That was later—along towards the fall of 1910.

(Testimony of W. M. Bristol.)

Q. Anything going on then?

A. Yes, sir; they were cutting logs there.

Q. Who was cutting logs? A. Mr. Day.

Q. That was the same Day that testified here?

A. Yes, sir.

Q. Were you ever on that property any more?

A. Yes, sir; I have been there two or three times since.

Q. Did you at any time see any mining operations carried on there? A. No, sir.

Q. Now, you say you have had experience as a miner since ninety-seven?

A. Yes, I mined for three years steady.

Q. You are acquainted with the mining conditions of Otter Creek and Flat Creek? A. Yes, sir.

Q. And all the creeks in this vicinity?

A. Yes, sir; I have prospected a good many of them here myself.

Q. I wish you would describe, as near as you can, the condition of the ground which is covered by this alleged Elliott Association, I mean, where is it located—in the valley and so forth?

A. Well, it is on the left limit of Boulder, and it is very high up—in fact, the upper side line—the greatest portion of it is above timber line—there is just once in a while a big scrub tree with the limbs clear to the ground. There is large boulders all around there.

Q. I wish you would state to the Court and Jury the material which you saw in this open cut.

A. Well, there was nothing but granite sand, like—

(Testimony of W. M. Bristol.)

just like you see on the hill there most anywhere. It is all over the divide there, most anywhere. [58]

Q. Now, suppose in a place such as you have described, a man would go and sink two or three shafts, and find in those shafts, or some of them, a few colors of gold; and suppose further, a man would sink a drain 125 feet long, and in that drain find the material which you have described—granite sand; and suppose, further, that he would pan there three or four or five pans, and get a few colors of gold in each pan, would that man, in your opinion as a miner, be justified in further expending time and money on a piece of property of that kind, with a reasonable expectation of developing a paying mine?

Mr. TAYLOR.—We object to the question. No proper foundation has been laid for such a question, in the first place; the defendant seeks to introduce evidence as to the character of the ground, which is decidedly objectionable, and which he has no right to do in this action. And furthermore, that it is irrelevant, incompetent and immaterial.

(After argument.)

COURT.—Objection overruled.

Mr. TAYLOR.—We note an exception.

Mr. RODEN.—(To WITNESS.)—You may answer that question.

A. No, sir.

[Testimony of Charles Strandberg, for Defendant.]

CHARLES STRANDBERG, for the defendant, testified as follows:

Direct Examination by Mr. RODEN.

Q. Your name is Charles Strandberg? A. Yes.

Q. And where do you reside?

A. On Otter Creek, at the present time.

Q. How long have you been in this Precinct?

A. This is my third summer.

Q. You came down here when the strike was made?

A. Yes.

Q. What is your business? A. Miner.

Q. How long have you followed that occupation?

A. Twelve years.

Q. Where?

A. Dawson, Fairbanks, and in this District.

Q. In what capacity have you mined?

A. Mostly carrying on my own mining.

Q. Been a prospector?

A. Operator most of the time.

Q. And you say you are operating on Otter Creek now? A. Yes, sir.

Q. Now, are you acquainted with Boulder Creek and its location?

A. I am some acquainted with it. [59]

Q. You have been up and down the creek, have you? A. Yes.

Q. Are you acquainted with the premises that have been called here the Elliott Association Claim?

A. I was introduced to them last summer, once.

Q. About what time last summer?

(Testimony of Charles Strandberg.)

A. Why, some time in August, I believe—the latter part of August.

Q. Well, did you do anything around there?

A. I did some panning.

Q. I wish you would first of all describe the location of this so-called claim? I mean the ground that it covers. A. The way the ground lays?

Q. Yes.

A. Well, as it was pointed out to me, there is a side-hill there with a little pup running through it—the way they showed me the boundaries.

Q. Who showed you the boundaries?

A. Mr. Robert Mann.

Q. That is the witness who testified here?

A. Yes.

Q. Now, describe the ground that he showed to you.

A. Well, it looked as if there had been a whole lot of timber on it at one time or another.

Q. Well, did you see any holes there, or drains, or anything like that?

A. I seen some shafts had been sunk in different places.

Q. How many of them did you see?

A. I believe it was three or four.

Q. Did you examine the material that was lying alongside the shafts? A. I did.

Q. What kind of material was it?

A. Well, down in this here little pup there, there seemed to be some gravel, and other material.

Q. Did you pan any of that stuff? A. I did.

(Testimony of Charles Strandberg.)

Q. Did you get anything?

A. I couldn't raise a color.

Q. How many pans did you pan?

A. I believe I panned two pans.

Q. Did you see anyone else pan? A. Yes.

Q. Who? A. John Ronan.

Q. How many pans did he pan?

A. Oh, two or three or four. [60]

Q. Did he get anything?

Mr. TAYLOR.—Just a moment. He hasn't shown that he saw him.

COURT.—(To Witness.) You saw the results of the panning? A. I saw the results.

Q. (Mr. RODEN).—What did he get?

A. I didn't see him get a color.

Q. Did you see anyone else pan?

A. Henry Riley.

Q. How many pans did he pan?

A. Oh, two or three or four—I can't just recollect how many.

Q. From each place? A. Yes.

Q. Do you know what his results were?

A. He didn't get any results, as far as gold was concerned.

Q. Did you see anyone else pan?

A. I don't recollect seeing anyone else pan.

Q. Now, when you panned, did you pan as a careful miner would pan? A. Same as we always pan.

Q. Your purpose and your object was to find and save the gold, if you possibly could? A. Yes, sir.

Q. And that seemed to be the object of the other

(Testimony of Charles Strandberg.)

men that were panning there? A. It did.

Q. Now, then, suppose a piece of ground were located like that one described, and a man should go and sink three or four shafts on it, and in these few shafts found a few colors of gold; and suppose, further, that a drain was run some 125 feet long, and in this drain this man should pan, say five pans, and should find in these pans a few colors of gold; in your opinion, would such person, speaking as a miner, would such a person—who need not necessarily be a miner, but should be a prudent person—would such a person be justified in expending further time, means and money in developing such property, with a reasonable expectation of finding a mine—a paying mine?

A. There wasn't enough, in my opinion, to do that.

Q. Well, what would your answer be—Yes or no?

A. No. [61]

Cross-examination by Mr. TAYLOR.

Q. Who, did you say, pointed out the location to you? A. Mr. Mann, I believe it was.

Q. Did you see any of the posts?

A. He showed me the blazed lines.

Mr. TAYLOR.—Just a moment. Before proceeding with the cross-examination, your Honor, I would move to strike out all the testimony of Mr. Strandberg, on the ground that it tends to show the character of the ground.

COURT.—The motion is denied.

Mr. TAYLOR.—We note an exception.

Q. Now, I would ask you if you know the dimen-

(Testimony of Charles Strandberg.)

sions of the Elliott Association.

A. Why, I don't know the exact dimensions of it.

Q. Supposing the claim to be—which it is—twenty-six hundred and forty feet square, you don't know whether you were in the middle of it, or on the side of it, as to its location?

A. Why, yes, I know we were pretty well all over it.

Q. You were all over it? A. Yes.

Q. Where were you all over it? You were in that cut, weren't you?

A. Yes, we were down in that little draw.

Q. In the little draw? A. Yes.

Q. How long did you say that cut was, that open cut?

A. I couldn't say how long that is. There had been some digging done there.

Q. As a miner, are you prepared to say that that claim is thoroughly prospected?

A. Oh, I wouldn't say that is thoroughly prospected.

Q. Is it not a fact in this country, gold can be found up on the hills, as well as down in the creeks?

A. Well it can be, yes.

Q. Is it not a fact, that it is? A. Sometimes.

Q. Is it not a fact that on the head of Flat Creek, in this Precinct, that there is gold found up there on top of the hill, between the creeks?

A. It has been found at the head of Flat Creek.

Q. Is it not a fact that gold is found on the top of hills around in this country? A. In places, yes.

(Testimony of Charles Strandberg.)

Q. Is it not so, on Flat Creek, at the head of Happy, and at the head of Chicken?

A. Yes, it is. [62]

Q. And at the head of Flat? A. It is.

Q. Did you try to prospect this claim up on the hill? A. We panned where shafts had been sunk.

Q. Did you get to bedrock on that claim?

A. I did see bedrock.

Q. Where? A. At those shafts.

Q. Where was this? A. On the hillside.

Q. How far up?

A. Oh, I can't tell the distance—toward the middle of the claim.

Q. Do you know you were on the Elliott Association at the time?

A. That's what I was told.

Q. You know you were told. You don't know of your own knowledge you were there? A. No.

Q. You say you panned two pans?

A. I panned three.

Q. And John Ronan?

A. Two or three, or four.

Q. And how many did Henry Riley pan?

A. About the same number.

Q. About four. Now I will ask you, if on a claim half a mile square twenty-six hundred and forty feet on each side, whether you would think twelve pans taken from that claim would constitute a proper testing of the claim for minerals, as a miner? Would you be satisfied to say there was no mineral there? A. I would have to sink more holes.

(Testimony of Charles Strandberg.)

Q. You would have to sink more holes before you would be satisfied? A. Yes.

Q. So you are not prepared to say at this time that there is no gold on that Elliott Association?

A. I couldn't say that.

Redirect Examination by Mr. RODEN.

Q. But you do say that in your opinion, as an experienced miner, a person would not be justified in expending further time, means and money, with a reasonable expectation of developing a paying mine, under those circumstances and conditions?

Mr. TAYLOR.—I would like to know what he refers to.

COURT.—(To Witness.) Do you understand the question?

A. I believe I do. I don't believe there was sufficient to justify. [63]

[Testimony of D. S. McDonald, for Defendant.]

D. S. McDONALD, for the defendant, testified as follows:

Direct Examination by Mr. RODEN.

Q. What is your business?

A. Mining at the present time.

Q. How long have you followed the occupation of miner? A. Since ninety-six.

Q. Where have you followed it?

A. I mined in South America—that is I worked for a mining company in South America. I come to Dawson in ninety-eight; to Fairbanks later.

Q. Where are you mining now?

(Testimony of D. S. McDonald.)

A. On Otter Creek.

Q. Are you acquainted with Boulder Creek?

A. Somewhat, yes.

Q. Do you know the premises that are known as the Elliott Association Claim?

A. I have been on that ground or claim that was pointed out to me as such.

Q. Who pointed it out to you?

A. If I remember rightly, Riley was one of the men.

Q. When was that?

A. And I had been over that ground before.

Q. Did you do anything on that ground?

A. I done some panning.

Q. When did you do that?

A. That was about the tenth of this month.

Q. How many pans did you pan?

A. Why, I panned several—seven or eight—I didn't keep track of them.

Q. Where did you get your materials to pan?

A. Off some dumps that was taken out of prospect shafts.

Q. Now, what kind of material was it that you panned? A. I would call it slide.

Q. Now, what was the result of your panning?

A. Why, I didn't get any gold.

Q. Did you get any other kind of mineral—precious mineral, I mean?

A. No—not that I could see, anyway.

Q. Now describe the location of that claim, as near as you can; I mean describe the ground it covers.

(Testimony of D. S. McDonald.)

A. Why, it is on the left limit of the upper end of Boulder Creek. Where those shafts were there was a low depression on the hill side that they called a pup, or small creek, where those shafts were that were sunk.

Q. Now was there any work going there, when you were up there? A. No. [64]

Q. Now suppose that a man marked out a piece of ground like the Elliott Association Claim, and commenced to sink three or four shafts upon it, and in the sinking of those shafts, after having sunk them, panned and received a few colors of gold out of them; and suppose further, that the man would run a bedrock drain up and down stream some one hundred and twenty-five feet—or, not a bedrock drain, a ditch—and in this ditch or cut, should pan three or four or five pans, and should receive a few colors of gold as a result of this panning; in your opinion, as a miner, would such person be justified in expending further time, means and money on this property, with the expectation of developing it as a paying mine?

A. No, sir, he has nothing more than a prospector's chance, that you might have right here in the street.

Cross-examination by Mr. TAYLOR.

Q. What do you mean by a prospector's chance?

A. The same as any of us have when we get out in the hills—we have a chance to find gold.

Q. You say you were taken over that ground on Boulder Creek? A. Yes, sir.

(Testimony of D. S. McDonald.)

Q. You say it was the Elliott Association?

A. I was told it was the Elliott Association. I didn't look up the records to find if it was the Elliott Association.

Q. You say you took your pannings off the dumps that were there? A. Yes.

Q. How many dumps did you find?

A. I believe it was four.

Q. Whereabouts were they?

A. They were along in this depression on the hill-side, or creek as it might be called.

Q. How much ground did they cover?

A. I would judge it might be something about five hundred feet between the upper and lower.

Q. Now, as a miner and prospector, I would ask you if you would think that ground was prospected thoroughly, that twenty-six hundred and forty feet square?

A. No I wouldn't consider it thoroughly prospected.

Q. Do you know whether or not you prospected out of the hole that discovery was made from?

A. No, sir, I do not.

(Witness excused.)

[**Testimony of Thomas McEwan, for Defendant.**]

THOMAS McEWAN, for the defendant, testified as follows:

Direct Examination by Mr. RODEN.

Q. What is your business? A. Mining.

Q. How long have you followed the occupation of

(Testimony of Thomas McEwan.)

a miner? A. Fifteen years. [65]

Q. Where?

A. Dawson, Fairbanks, Innoko and this camp.

Q. How long have you followed it in this Precinct here? A. Three years.

Q. Are you mining at the present time?

A. Yes, sir.

Q. Whereabouts are you mining? A. Otter.

Q. Are you acquainted with the premises known as the Boulder Creek? A. Yes.

Q. How long have you known that creek?

A. How long?

Q. Yes.

A. Well, it is three years since I have been on Boulder first.

Q. You are generally acquainted with the conditions in this Precinct, are you not? A. I think so.

Q. Have you ever been up on what is known as the Elliott Association on Boulder Creek?

A. Yes, sir.

Q. When were you up there?

A. Oh, I have been there a good many times. I have been there two years ago last winter, I guess, was the first time I was up there, and a year ago last winter.

Q. Was anyone on the claim when you got there two years ago? A. I never seen anyone.

Q. Well, have you ever done any panning there yourself? A. Yes, sir.

Q. When was that?

A. About five or six days ago.

(Testimony of Thomas McEwan.)

Q. Now I wish you would describe to the Court and Jury what you did do?

A. Well, I see three prospect holes, and I panned four pans from one, and five pans from another of the holes. I panned two holes, or where two holes had been sunk.

Q. Now what kind of material did you pan?

A. It was—in one hole there was what I supposed to be bedrock, slide and a little gravel.

Q. Now what did you get as a result of your pannings from that hole? A. In gold?

Q. Yes. A. I didn't get any gold at all.

Q. Did you get any other precious minerals?

A. Not that I could tell.

Q. What about the other hole?

A. I didn't get a color in any hole. [66]

Q. What kind of material did you pan in the second hole?

A. It was principally slide rock. Now there might be a piece of wash rock. There was no good gravel in any of them.

Q. I wish you would describe the location of this ground that you panned. A. Of the claim?

Q. Yes.

A. Well, it is on the left limit of Boulder Creek, on a pup—some people call it a fork of Boulder Creek. It comes in on the left limit. I don't know whether it has a name or not.

Q. Now suppose a man would stake a piece of ground like the one you have described, and should sink three or four shafts on it, and in sinking these

(Testimony of Thomas McEwan.)

shafts, and on reaching bedrock, should find a few pieces of gold; and suppose further, that a man should run a ditch some hundred and twenty-five feet in length through the claim, and out of such ditch pan three or four or five pans, and receive as a result thereof a few colors of gold; in your opinion, as a miner, would such person be justified in further expending time, means and money in developing such property, with a reasonable expectation of developing a paying mine? A. No, sir.

Cross-examination by Mr. TAYLOR.

Q. You don't know whether at the time you were panning, that these holes were where they made discovery on that claim?

A. Yes I know. I am sure I know, yes. I know I was on this disputed ground.

Q. That might be too. But did you know you were at the holes on that ground where Mr. Fox made discovery? A. Oh, no, I don't know that.

Q. You might have been at altogether a different place? A. I was at two holes.

Mr. TAYLOR.—Plaintiff moves to strike all the testimony of this witness, on the ground that it is presented for the purpose of establishing the character of the ground.

COURT.—The motion is denied.

Mr. TAYLOR.—We note an exception.

(Witness excused.)

[Testimony of M. D. McCarty, for Defendant.]

M. D. McCARTY, for the defendant, testified as follows:

Direct Examination by Mr. RODEN.

Q. What is your business? A. I am a miner.

Q. How long have you followed the business of mining? A. Well, about twelve years.

Q. Where?

A. In Dawson, Fairbanks, Innoko and Iditarod.

[67]

Q. Are you acquainted with the creek known as Boulder Creek? A. Yes, sir, I cut wood there.

Q. Now, when did you first go on Boulder Creek?

A. Well, it was in the spring of 1911.

Q. Did you ever do any mining or prospecting on Boulder Creek? A. No, sir, I never did.

Q. Now have you got any mining interests on Boulder Creek?

A. Well, I had a fourth interest in an association there.

Q. Where was that?

A. That was up at the head of Boulder.

Q. Do you know the claim known as the Elliott?

A. Yes. It was above the Elliott.

Q. Did it adjoin the Elliott?

A. Yes, it adjoined the Elliott.

Q. When did you locate that claim?

A. Well, it was in December, 1910, I believe.

Q. Did you ever do any work on that claim?

A. I helped to sink one hole there. I don't call that any prospecting, though. We were there in the

(Testimony of M. D. McCarty.)

spring of the year, waiting for the snow to go.

Q. How deep was that hole? A. Twelve feet.

Q. To bedrock? A. Yes.

Q. What kind of material did you go through?

A. We went through slide.

Q. Where was that hole with reference to the line of the Elliott Association that adjoins your claim?

A. Well, according to my line it was about five hundred feet.

Q. From it?

A. From the line of my claim; but according to theirs, to the Elliott Association Claim, it was only about a hundred and fifty feet.

Q. Did you find anything in that hole?

A. Not a thing.

Q. You panned, of course? A. Oh, sure.

Q. Now are you acquainted with the ground covered by the Elliott Association?

A. I have been over it a hundred times, I suppose, in the year and a half.

Q. Now suppose a man would locate or stake a piece of ground like the Elliott Association, and sink three or four shafts, and find a few colors in them and should later on run a drain or ditch through the claim, about one hundred and twenty-five feet long, and say, pan three or four or five pans in which he should also find a few colors of gold; do you think such a man would be justified in putting in [68] further time or money, with the expectation of developing a paying mine?

A. No, I don't think two or three, or four or five

(Testimony of M. D. McCarty.)

colors will develop a claim. I don't think it is even a prospect.

Mr. TAYLOR.—We move to strike out the testimony of Mr. McCarty, on the ground that it is tending to prove the character of the ground.

COURT.—The motion is denied.

Mr. TAYLOR.—We note an exception.

Cross-examination by Mr. TAYLOR.

Q. You were never on the Elliott Association prospecting, were you?

A. No, I never was prospecting there, I prospected above, on my own ground.

Q. You don't know whether there is any mineral or not on the Elliott? A. No, I don't.

(Witness excused.)

[Testimony of Robert Mann, for Defendant
(Recalled).]

ROBERT MANN, recalled for the defendant, testified as follows:

Direct Examination by Mr. RODEN.

Q. Now, while you were cutting the wood that you testified to, this afternoon, where were you living?

A. On a portion of this Elliott Association.

Q. Now during the time you lived on there, was any mining being carried on?

Mr. TAYLOR.—Objected to as irrelevant, incompetent and immaterial.

COURT.—The objection is overruled.

Mr. TAYLOR.—We note an exception.

Q. And you say you went on there some time in

(Testimony of Robert Mann.)

March, 1911? A. Yes.

Q. And you are on there today, are you?

A. No, sir, not on the Elliott.

Q. When did you quit—oh, yes, I remember—you quit in September, 1911. Now are you acquainted with the lines of the Elliott Association?

A. Well, I am acquainted with the lines as they were shown to me.

Q. By whom?

A. But you can't read the writing on the stakes. I am acquainted with the lines as described to me by Mr. Blais.

Q. Well, have you ever followed around those lines? A. Oh, yes.

Q. And what is the width or the length?

A. Well, it is a pretty big claim. I never measured it.

Q. Now did you ever take anyone up there to do any panning?

A. I was up there with Mr. Strandberg and Mr. Riley, and Mr. Ronan; and this other Mr. Riley—Mr. Henry Riley, and Mr. George Riley. [69]

Q. That was last year? A. Yes, sir, 1912.

Q. Did you notice what they did?

A. Yes, sir, I showed them the holes that were sunk on this claim.

Q. Now did you ever do any panning around there? A. Yes, sir, I did.

Q. Where?

A. Well, I done some panning on this open cut, or bedrock drain, that Mr. Fox said he put in.

(Testimony of Robert Mann.)

Q. When did you do that? A. Last fall.

Q. How many pans did you pan?

A. Oh I panned several all along the cut—must have panned a dozen or fifteen.

Q. Did you get anything?

A. Never got a color.

Q. Now you are well acquainted with all Boulder Creek, are you? A. Yes.

Q. Is there any mining being carried on there now? A. No, sir.

Q. Has any paystreak ever been developed on the creek anywhere?

A. Not that I ever heard tell of.

Q. How long have you been engaged in the mining business?

A. I started in first—my first experience was in 1883, in the northern part of California.

Q. And have you been following the occupation of a miner and prospector since that time?

A. Off and on ever since.

Q. And how long have you been in Alaska?

A. I came to Dawson in ninety-seven.

Q. And then to Alaska? A. To Nome in 1900.

Q. And when did you come here?

A. Three years ago.

Q. Now I wish you would describe the location of this Elliott Claim; I mean where it is with reference to the valley.

A. Well, I will have to go off the map, show you there, as I understand it.

Q. Well, go ahead.

(Testimony of Robert Mann.)

A. Well, it has always been described to me as a creek going up here (indicating on diagram) and this pup what took in this part of it.

Q. Well, where is it with reference to the side hill?

A. Well, there is two forks run off like that, and the claim takes in this fork. [70]

Q. Now suppose a man should locate a piece of ground like that, and should sink three or four shafts, and in those shafts should find a few colors of gold; and suppose further, a man would run a ditch a hundred and twenty-five feet in length, as this ditch was run on this claim, and should find as a result of panning three or four, or five pans, a few colors of gold; in your opinion as a miner, would such a person be justified in further developing that ground,—or would such a person be justified in further expending his time, means and money in further developing that ground with a reasonable expectation of developing a paying mine? A. No, sir.

Cross-examination by Mr. TAYLOR.

Q. You say you showed these several parties the holes that were on the claim? A. Yes.

Q. Who put these holes there, do you know?

A. No, sir, I don't. I was told—

Q. Never mind what you were told. You don't know who put those holes there? A. No.

Q. Do you know whether any of those holes was the place where Mr. Fox got colors from?

A. I don't know.

Mr. TAYLOR.—We move to strike out all the evidence of Mr. Mann, for the reason that it is incom-

(Testimony of Robert Mann.)

petent, irrelevant and immaterial, and further, that it is tending to establish the character of the ground.

COURT.—The motion is denied.

Mr. TAYLOR.—We note an exception.

(Witness excused.)

[**Testimony of J. E. Riley, in His Own Behalf.**]

J. E. RILEY, defendant in his own behalf, testified as follows:

Direct Examination by Mr. RODEN.

Q. You are one of the defendants in this case?

A. Yes, sir.

Q. And you and Mr. Marston are partners in the mining business? A. We are.

Q. How long have you been following the occupation of a miner?

A. About twenty-five or twenty-six years.

Q. Where?

A. All over Alaska, and different places—Dawson and California.

Q. And how long have you been in this section of Alaska? A. Four years this coming fall.

Q. Are you acquainted with Boulder Creek, in this precinct? A. I am. [71]

Q. When did you first become acquainted with that creek?

A. The first time I ever went over the creeks, I went down the trail and walked down Boulder.

Q. Have you been over the ground that is claimed as the Elliott Association? A. Yes, sir.

Q. Have you ever been on there? A. I have.

Q. When was that?

(Testimony of J. E. Riley.)

A. I have been on there several times.

Q. When were you on there the first time?

A. On there the first time the winter of 1909 and 1910.

Q. And did you do anything on that claim at that time? A. No, sir.

Q. Was there anybody on it?

A. No, sir, not that I seen.

Q. When were you on there again?

A. If I remember right, in 1911.

Q. What time in 1911?

A. In the fall of the year.

Q. Did you do anything on the claim at the time?

A. No, sir.

Q. Did you ever do any panning on that claim?

A. I saw some panning, yes.

Q. You saw panning? A. Yes.

Q. Whom did you see?

A. Ronan, and Henry Riley and Strandberg.

Q. You saw them in 1911? A. 1912.

Q. Last year? A. Yes.

Q. You say you saw them panning? A. I did.

Q. Where did they get the material to pan from?

A. Off the dumps that was taken out of these holes.

Q. Do you remember how many dumps there were? A. Four, I think.

Q. Do you know the results of their panning?

A. Yes, sir.

Q. Now what did they get?

Mr. TAYLOR.—Objected to as incompetent, irrelevant and immaterial, and not binding upon the

(Testimony of J. E. Riley.)
plaintiff in this action.

COURT.—(To witness.) You are testifying to what you saw there? A. Yes, sir. [72]

COURT.—The objection is overruled.

Mr. TAYLOR.—We note an exception.

A. They didn't get anything, that I could see in the pans.

Q. I wish you would describe to the Court and jury the location of this so-called claim.

A. Oh, the location is near the head of Boulder Creek, near where it forks, and practically the most of the claim is between the two forks—a kind of a side hill, low grade.

Q. Now suppose a man should locate a piece of ground like that, and should sink three or four shafts, and should pan those shafts and find a few colors of gold; and suppose further, that he would run a ditch a hundred and twenty-five feet, and in that ditch or cut should find also, a few colors of gold, as a result of panning—say four or five pans; now, in your opinion as a miner, would such person be justified in expending further time, means and money in developing such property, with a reasonable expectation of developing a paying mine? A. No, sir.

Cross-examination by Mr. TAYLOR.

Q. This claim is located on a bench, is it?

A. Partially, yes, sir.

Q. You have known bench claims to contain pay before, haven't you? A. You bet I have.

Q. The holes you saw these pannings taken out from, did they go down the holes, or were they off the

(Testimony of J. E. Riley.)

dump? A. Off the dump.

Q. Do you know who dug those holes?

A. No, sir, I don't.

Q. You don't know whether they were the same holes that discovery was made from?

A. No, sir, I don't know.

Mr. TAYLOR.—We make the same objection to Mr. Riley's testimony that has been offered to the rest of these witnesses.

COURT.—The objection is overruled.

Mr. TAYLOR.—Exception.

(Witness excused.)

Mr. TAYLOR.—Plaintiff rests.

[Motion for Directed Verdict in Favor of Defendants, Etc.]

Mr. RODEN.—Now, may it please your Honor, we make a motion at this time that the Court instruct the jury to return a verdict in favor of the defendants in this case, for the following reasons: First: That the title and ownership of the alleged placer mining claim, and the wood cut therefrom, is directly in issue in this case, and the testimony does not show that the plaintiff, at the time of the alleged trespass, had either a general or special property therein, or in any part thereof; Second: The testimony does not show that the land described in the complaint herein, and on which the wood was cut was distinctly mineral in character, or was more valuable for the mineral therein contained than for the timber growing thereon: [73] Third: the testimony shows that at the time of the alleged tres-

pass, and at the time of the cutting of the wood, the land alleged to have been, trespassed upon and from which the wood is alleged to have been taken, was public land of the United States; Fourth: Because all the testimony in this action shows that the premises described in the complaint, and the wood cut therefrom, was the property of the United States, and that plaintiff had neither the right nor title thereto, nor the possession thereof, nor the right to the possession thereof; Fifth: That all the testimony introduced in this case shows that the trespass alleged to have been committed, if committed at all, was committed prior to the first day of October, 1911, and prior to the time the plaintiff herein acquired any title to the premises described in the complaint, and that no trespass was committed; and there is no testimony showing that any trespass was committed, after this plaintiff became the owner of the alleged mining claim described in the complaint, or became the owner of the wood cut therefrom, or acquired the right of possession therein, or the possession thereof; Sixth: That all the testimony in this case shows that the trespass, if any was committed, was not committed by these defendants, nor by their servants, agents or employees, or by any person under their control, or under the control of either of them; nor is there any testimony showing that these defendants, or either of them, advised, connived in, procured or incited any person to commit such trespass, if any was committed.

Now these are the grounds, may it please Your Honor—and perhaps the further one; Seventh: that

the testimony does not show that either plaintiff or his grantors made a valid mining location upon the premises, or embracing the premises described in the complaint herein; and there is no testimony showing that the plaintiff, or his grantors, or any of them, or any person for them, ever marked the boundaries of the alleged mining claim so that the same could be readily traced; that they never made a discovery of gold, or other precious minerals within the exterior boundaries of the premises described in the complaint, such as is required by law; that they never filed any notices of location, or made any notice of location whatsoever, either upon the said premises, or anywhere; Eighth: That the testimony shows that the annual assessment work required to be done under the mining laws of the United States, was not performed during the year 1911, and that by reason thereof, the said mining claim described in the complaint, if it ever existed, lapsed, became forfeited, and again became a portion of the unappropriated public domain of the United States.

Now these are the reasons, may it please Your Honor, upon which we ask the Court to instruct the Jury to return a verdict in favor of the defendant.

(After argument by counsel for both parties.)

By the COURT.—It seems to me that the evidence has shown that when the trespass was committed, that the wood was all cut, not prior to the date alleged in the complaint, but prior to the time of the conveyance to the plaintiff and that it was there on the ground, not requiring anything further to be done to it; and I am not sure that the wood

passed to the plaintiff, by any means, under that conveyance.

With regard to the points upon which the defendant bases his motion: there is no title shown to the land or wood, and it seems to me it is incumbent upon the plaintiff, having alleged that he was the owner, to show something in the nature of ownership, at least. It might be satisfied by showing actual possession. A presumption of ownership follows from possession, which is averred. In mere actions of straight trespass, it is perhaps sufficient to show possession. But the nature of the title plaintiff has alleged here, is that of ownership of a mining claim.

[74]

The objection that the evidence does not show that this was land of mineral character, that it was more valuable for wood, for the timber on it, I think is not well taken. It is only in so far as a valid discovery must be shown that that matter is involved in an action of this kind, or in any action between different parties outside of the Land Office, over a mining claim. It is necessary, of course, to show a valid location; that is, to show such a discovery as is required by law, which is such a discovery as will warrant an ordinary prudent man, not necessarily a miner, in expending his time, money and labor, with the reasonable expectation of developing a paying mine upon the property; and when that is satisfied it may be also even more valuable for timber land than for mining, but if the location is made in good faith, that is sufficient. The title of the locator is not defeated, because it happens to have a valuable

growth of timber upon it. If the purpose were simply to acquire possession of the timber by means of a pretended location, then it is a different matter; but if the location is made in good faith, as a mining claim, that is all that is required. And certainly, in any proceeding outside of the Land Office this would be sufficient. As to the question of whether or not such a discovery was made, I think that is a question of fact for the jury to determine. There was some testimony on the part of the defendant to that effect, and as long as there was a conflict of evidence, it would not be for the Court to say on which side the weight of the evidence was, but a question of fact for the determination of the jury. On the question of marking of the boundaries, while I think the evidence was not very definite—it was very indefinite as to the nature of the stakes that were put up, and the character of the markings—still, I think there was some evidence that there had been such a marking of the boundaries on the ground, whereby the limits of the claim could be traced. They seem to have been traced by a number of different parties. Whether or not it was sufficient to comply with the law, I think is also a question of fact to be decided by the jury.

And while, undoubtedly, under the Waskey Act, it has been construed by our Circuit Court of Appeals that it is absolutely necessary that the assessment work be done during the year, and if it is not done during the year in which it is required, the claim lapses without any entry thereafter—It was so held in the case of Thatcher against Brown—of

course it is a decision which the Courts in this District must enforce, but I do not understand that this changed the nature of the pleadings in an action of this kind. It always has been the rule that to take advantage of forfeiture, it must be alleged in the pleadings; it must be made one of the issues in the case, by the pleadings.

Mr. RODEN.—I don't know how it would be as far as the pleadings were concerned, Your Honor. There has no case come up since that decision.

After further argument,

By the COURT.—(Continuing.) If it conclusively appeared that plaintiff had no title at the time the trespass was committed, of course there would be no damage committed. This is an action, as I view it, not to determine conflicting locations. It is an action to recover treble damages, under the Statutes, for the injury suffered by the cutting of standing timber, and there must be some damage shown to the plaintiff before he can recover—that is, before he can recover anything more than nominal damages. I fail to see that anything more than that has been suffered by this plaintiff. The wood was severed from the property prior to the time the conveyance was made to the plaintiff, and if the jury should find he was the owner at the time the wood was taken away, there is nothing to show what the damage was. There is nothing more than the entry upon the land. Damage, of course, would be presumed, but not substantial damages. And while this question has not been raised [75] in this case, as to the measure of damages, in an action of this kind if it were sub-

mitted to the jury it would be necessary to consider what is the plaintiff's measure of damage for wood taken off the mining claim. He has not an absolute fee simple title. He simply has the right to his mine upon the ground, so long as he complies with the Statutes of the United States. He has the right to use the wood on the ground for mining purposes, but he has not the right to take the wood from the ground and sell it elsewhere. The Government can still restrain him from doing that. Now the view I take of such a case is that the damage which he has sustained is the damage to the mining claim, as such, and not the value of the wood that would necessarily be the measure of damages. There seem to be several different rules laid down, by which damages are measured, where wood or grain is taken from land—timber particularly. It may be measured by the value of the wood upon the mining claim; or it may be measured by the value at the place where it was converted by the other party—in this case I suppose it would be on Otter Creek, if that rule were applied—or it may be the difference between the value of the land with the wood upon it, and the value with the wood gone. And I think the latter rule would be the one to apply in a case of this kind, because the owner of a mining claim has no right to sell the wood. He has only the right to use it upon the ground; and the damage so sustained would be the difference between the mining claim with the wood upon it, and the value of the claim if the wood were gone. There has been no testimony whatever in this case as to the value of

the mining claim either before or after the wood was gone.

Mr. TAYLOR.—We have shown, if the Court please, what it would cost to put that wood back.

By the COURT.—(Continuing.) Yes, but you have not shown that the claim would be of any value whatever, if the wood were put back.

Giving the fullest effect to the testimony of the plaintiff, as I am required to do in considering a motion of this kind, and assuming that there is a question of fact which ordinarily should be submitted to the jury, as to the location and discovery and markings of boundaries, I cannot see, if it were submitted to the jury, that they would be justified in finding anything more than nominal damages. And, taking that view of the case, I think it is not worth while to submit it to the jury. Defendant's motion for a directed verdict will be granted.

Mr. TAYLOR.—To which plaintiff excepts, may the Court please.

By the COURT.—Gentlemen of the Jury, you will select a foreman, and return a verdict finding for the defendants. You may do so without retiring.

(Verdict returned as instructed.)

By the COURT.—I might say, further, in regard to one point in this case, that the testimony did not show that any trespass had been committed by the defendants themselves, or by anyone acting for them. If it were an action strictly of conversion, the evidence would be undoubtedly, sufficient to hold them responsible. I think the Government has, in several cases, recovered from parties who have taken

timber or cut wood under circumstances similar to these.

Mr. RODEN.—Yes, your Honor. [76]

By the COURT.—And any other owner could, also under similar circumstances. [77]

[Order Approving etc., Bill of Exceptions.]

*In the District Court for the Territory of Alaska,
Fourth Division.*

No. 97—I.

GEORGE W. ALBRECHT,

Plaintiff,

vs.

J. E. RILEY & M. H. MARSTON, Copartners, Doing Business as RILEY & MARSTON,
Defendants.

Be it remembered that on this 20th day of July, A. D. 1914, the above-named plaintiff presented his Bill of Exceptions to the above-entitled Court for allowance and Settlement, which said Bill of Exceptions has been duly filed within the time allowed by order of said Court; and it appearing to the Court from an examination of said Bill of Exceptions and upon the stipulation of the respective Counsel for the parties herein, that the same contains all the material evidence, testimony and exhibits introduced upon the trial of said cause and the proceedings had thereon not of record, and is in all respects true and correct:

Now, therefore, on motion of the plaintiff, it is

hereby ordered and adjudged that the foregoing typewritten pages from 1 to 50, inclusive, be, and the same is hereby approved, allowed and settled as the Bill of Exceptions of the above-entitled cause. That whenever an exception was noted by either of the parties hereto, to any ruling of the Court that the same was then and there allowed by the Court.

Dated Iditarod, Alaska, July 20, 1914.

F. E. FULLER,
District Judge.

Entered in Court Journal No. 2, page 76, at Iditarod, Alaska. [78]

[**Stipulation re Transcript of Record.]**

*In the District Court for the Territory of Alaska,
Fourth Division.*

No. 97—I.

GEORGE W. ALBRECHT,

Plaintiff,

vs.

J. E. RILEY and M. H. MARSTON, Copartners,
Doing Business as RILEY and MARSTON,

IT IS HEREBY STIPULATED AND AGREED by and between the respective Counsel for the parties hereto, that the Clerk of the Court shall cause to be corrected all the clerical errors in the foregoing fifty-one (51) typewritten sheets, and that when so corrected, they shall constitute the testimony and decision of the Court.

That the said Clerk shall cause this Transcript and

Bill of Exceptions to be printed in a correct, uniform, printers style, not following copy literally in all details, and omitting the title of the Court and cause in all places except the beginning.

That the Transcript and Bill of Exceptions herein shall consist of the Complaint; Answer; Demurrer to Answer; Order Overruling Demurrer and Permitting Amended Answer; Affidavit of G. W. Albrecht; Motion for Default; Order Denying Motion for Default; Reply; Plaintiff's Exhibits "A," "B," "C," "D"; Verdict; Judgment; Testimony; Petition for Writ of Error; Assignment of Errors; Order Allowing Writ of Error and this Stipulation;

It is also further stipulated and agreed that the time for filing this Bill of Exceptions has been, by proper order of Court, duly extended to the date hereof.

Dated July 20, 1914.

CHAS. E. TAYLOR,
Attorney for Plaintiff,
HENRY RODEN,
Attorney for Defendants.

Filed in the District Court. Territory of Alaska,
4th Div. Jul. 20, 1914. Angus McBride, Clerk.
By Geo. W. Albrecht, Deputy. [79]

*In the District Court for the Territory of Alaska,
Fourth Division.*

No. 97—I.

GEORGE W. ALBRECHT,

Plaintiff,

vs.

J. E. RILEY and M. H. MARSTON, Copartners,
Doing Business as RILEY and MARSTON,
Defendants.**Petition for Writ of Error.**

George W. Albrecht, the plaintiff in the above-entitled action, feeling himself aggrieved by the proceedings had in said action and by the Verdict and Judgment therein made and entered by the above-entitled Court on the 16th day of July, A. D. 1913, comes now by his attorney, Charles E. Taylor, and petitions the Court for an order allowing the said plaintiff to prosecute a Writ of Error to the Honorable the United States Circuit Court of Appeals for the Ninth Circuit, holding terms at the City of San Francisco in the State of California, under and according to the laws of the United States in that behalf made and provided; Also that an order be made fixing the amount of Cost Bond which the said plaintiff shall furnish upon such Writ of Error.

Dated at Iditarod, Alaska, May 28, 1914.

CHAS. E. TAYLOR,
Attorney for Plaintiff,

Filed in the District Court. Territory of Alaska,
4th Div. Jul. 20, 1914. Angus McBride, Clerk.
By Geo. W. Albrecht, Deputy. [80]

*In the District Court for the Territory of Alaska,
Fourth Division.*

No. 97—I.

GEORGE W. ALBRECHT,

Plaintiff,

vs.

J. E. RILEY and M. H. MARSTON, Copartners,
Doing Business as RILEY & MARSTON,
Defendants.

**Order Allowing Writ of Error [and Fixing Amount
of Bond].**

Upon motion of Charles E. Taylor, attorney for George W. Albrecht, the above-named plaintiff, and the filing of petition for Writ of Error and Assignment of Error;

It is hereby Ordered that a Writ of Error be, and the same is hereby allowed to be reviewed in the United States Circuit Court of Appeals for the Ninth Circuit, holding terms at San Francisco, California; That the amount of the bond to be given by the plaintiff on said Writ of Error be, and the same is hereby fixed at the sum of \$250.00.

Dated this 22d day of July, A. D. 1914.

F. E. FULLER,
District Judge.

Entered in Court Journal No. 2, page 79, at Iditarod, Alaska.

Filed in the District Court. Territory of Alaska, 4th Div., Jul. 22, 1914. Angus McBride, Clerk. By Geo. W. Albrecht, Deputy. [81]

*In the District Court for the Territory of Alaska,
Fourth Division.*

No. 97—I.

GEORGE W. ALBRECHT,

Plaintiff,

vs.

J. E. RILEY and M. H. MARSTON, Copartners,
Doing Business as RILEY and MARSTON,
Defendants.

Assignment of Errors.

Comes now the above-named plaintiff, George W. Albrecht, the plaintiff in error and presents and files this, his assignment of Errors in the proceedings and trial of the above-entitled action in the above-named court, which said Assignment of Errors the plaintiff in error intends to and does rely upon in the Writ of Error herein granted, to be prosecuted in the United States Circuit Court of Appeals for the Ninth Circuit, holding terms at Seattle, Washington.

1.

The Court erred in overruling plaintiff's demurrer to the affirmative answers and defenses of the defendant, as per order of said Court made and entered on September 12, 1912, for the reason that the said

affirmative answers do not state facts sufficient to constitute a defense to the complaint.

2.

The Court erred in denying plaintiff's motion, filed on June 27, 1913, for an order of default and judgment against the defendants, for the reason that the said defendants, in open Court, on the 12th day of September, 1912, applied for and obtained permission by order of said Court on said day, to file [82] forthwith an amended answer in said cause; that thereafter, they wholly failed and neglected to file such amended answer.

3.

The Court erred in requiring plaintiff to prove the original location of a placer mining claim by plaintiff's predecessors in interest, to wit: Upon the examination of the plaintiff, he was asked:

Q. You state in your complaint that you are the owner of that claim; by virtue of what instrument or possession do you own it? A. By a deed.

Q. Have you that deed?

Mr. RODEN.—We object to that question, because it has not been shown that any such claim as the Elliott Association claim exists.

The COURT.—I think you had better proceed in the regular way, and establish your location first, Mr. Taylor.

4.

The Court erred in granting plaintiff's motion for a directed verdict at the conclusion of the testimony.

5.

The Court erred in holding and deciding that no

title to wood passed under the conveyance to the plaintiff because the said wood was cut before the date of the said conveyance, said decision being as follows:

“By the COURT.—It seems to me that the evidence has shown that when the trespass was committed, that the wood was all cut, not prior to the date alleged in the complaint, but prior to the time of the conveyance to the plaintiff, and that it was there on the ground, not requiring anything further to be done to it, and I am not sure that the wood passed to the plaintiff, by any means, under that conveyance.”

6.

The Court erred in further holding and deciding as follows: [83]

“There is no title shown to the land or wood and it seems to me it is incumbent upon the plaintiff, having alleged that he was the owner, to show something in the nature of ownership at least.”

7.

The Court erred in further deciding as follows:

“It is necessary, of course, to show a valid location; that is, to show such a discovery as is required by law.”

8.

The Court erred in further deciding as follows:

“If it conclusively appeared that plaintiff had no title at the time the trespass was committed, of course, there would be no damage.”

9.

The Court erred in further deciding as follows:

"It is an action to recover treble damages, under the Statute, for the injury suffered by the cutting of standing timber, and there must be some damage shown to the plaintiff before he can recover; that is, before he can recover anything more than nominal damages. I fail to see that anything more than that has been suffered by this plaintiff."

10.

The Court erred in further deciding as follows:

"The wood was severed from the property prior to the time the conveyance was made to the plaintiff, and if the jury should find he was the owner at the time the wood was taken away, there is nothing to show what the damage was. There is nothing more than the entry upon the land. Damage, of course, would be presumed, but not substantial damage."

[84]

11.

The Court erred in further deciding as follows:

"Now, the view that I take of such a case is that the damage which he has sustained is the damage to the mining claim, as such, and not the value of the wood that would necessarily be the measure of damages."

12.

The Court erred in further finding and deciding as follows:

"There has been no testimony whatever in this case as to the value of the mining claim, either before or after the wood was gone."

Mr. TAYLOR.—We have shown, if the Court please, what it would cost to put that wood back.

The COURT.—Yes, but you have not shown that the claim would be of any value whatever, if the wood were put back.

13.

The Court erred in further deciding as follows:

“Giving the fullest effect to the testimony of the plaintiff as I am required to do in considering a motion of this kind, and assuming that there is a question of fact which ordinarily should be submitted to the jury, as to the location and discovery and marking of boundaries, I cannot see, if it were submitted to the jury, and that they would be justified in finding anything more than nominal damages, and taking that view of the case, I think it is not worth while to submit it to the jury.

14.

The Court erred in further deciding as follows:

“I might say, further, in regard to one point in this case, that the testimony did not show that any trespass had been committed by the defendant, or by anyone acting for them. [85].

15.

The Court erred in failing and refusing to submit the case to the Jury at the conclusion of the testimony.

To all of which findings and decisions of the said Court, the plaintiff duly excepted, and said exceptions were allowed.

16.

The Court erred in giving and entering judgment in favor of the said defendants and against the plaintiff herein, that the plaintiff take nothing and that

defendant recover their costs and disbursements herein, which said judgment was in accordance with said directed verdict.

Wherefore, the said George W. Albrecht, plaintiff in error, prays, that said judgment be reversed and set aside and, judgment be given to the said plaintiff in error for the amount prayed for in his complaint herein.

CHAS. E. TAYLOR,
Attorney for Plaintiff in Error, George W. Albrecht.

Filed in the District Court, Territory of Alaska,
4th Div. Jul. 20, 1914. Angus McBride, Clerk. By
Geo. W. Albrecht, Deputy. [86]

*In the District Court for the Territory of Alaska,
Fourth Division.*

No. 97—I.

GEORGE W. ALBRECHT,

Plaintiff,

vs.

J. E. RILEY and M. H. MARSTON, Copartners,
Doing Business as RILEY and MARSTON,
Defendants.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS: That we, George W. Albrecht, as principal, and Samuel Applebaum and _____, as sureties, are held and firmly bound unto J. E. Riley and M. H. Marston, copartners, doing business as Riley and

Marston, in the full and just sum of two hundred fifty dollars (\$250), to be paid to the said Riley and Marston, their executors, administrators and assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 28th day of July, A. D. 1914.

Whereas the above named George W. Albrecht has sued out a Writ of Error from the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment in the above-entitled action, and a citation directed to the above named J. E. Riley and M. H. Marston, copartners, is about to be issued, citing and admonishing them to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, California:

[87]

Now, the condition of the above obligation is such that if the said George W. Albrecht shall prosecute his Writ of Error to effect and shall answer all damages and costs if he fails to make his plea good, then the above obligation to be void, otherwise to remain in full force and virtue.

GEO. W. ALBRECHT. [Seal]

SAM'L APPLEBAUM. [Seal]

J. J. SMITH. [Seal]

United States of America,
Territory of Alaska,
Fourth Division,—ss.

Samuel Applebaum and Jay J. Smith, the sureties named in the foregoing bond, being first duly sworn

each for himself, says: That he is a resident within the Territory of Alaska. That he is not an Attorney or Counsellor at Law, United States Marshal or other officer of any Court. That he is worth the sum of two hundred and fifty dollars over and above all just debts and liabilities exclusive of property exempt from execution.

SAM'L APPLEBAUM.

J. J. SMITH.

Subscribed and sworn to before me this 28th day of July, 1914.

[Seal]

CHAS. E. TAYLOR,

Notary Public in and for Alaska.

My commission expires Dec. 24, 1915.

The foregoing Bond taken and approved this 28th day of July, A. D. 1914.

L. E. FULLER,

District Judge.

Filed in the District Court, Territory of Alaska, 4th Div. Jul. 28, 1914. Angus McBride, Clerk. By Geo. W. Albrecht, Deputy. [88]

[Writ of Error (Original).]

UNITED STATES OF AMERICA,—ss.

The President of the United States, to the Honorable the Judge of the District Court for the Territory of Alaska, Fourth Division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said District Court, before you, between George W. Albrecht, plaintiff, and J. E. Riley and M. H. Marston, copartners, doing business as Riley and

Marston, defendants, a manifest error hath happened, to the great damage of the said George W. Albrecht, plaintiff, as is said and appears by his petition herein.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the United States Circuit Court of Appeals for the Ninth Circuit, in the City of San Francisco, in the State of California, together with this Writ, so as to have the same at the said place in said circuit on the 27th day of August, A. D. 1914, that the record and proceedings being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct those errors what of right, and according to the laws and customs of the United States should be done.

WITNESS, the Honorable EDWARD D. WHITE, Chief [89] Justice of the Supreme Court of the United States, this 28th day of July, A. D. 1914.

Attest my hand and the Seal of the District Court for the Territory of Alaska, Fourth Division, this 28th day of July, A. D. 1914.

[Seal] ANGUS McBRIDE,
Clerk of the District Court for the Territory of
Alaska, Fourth Division.

Allowed this 28th day of July, A. D. 1914.

F. E. FULLER,
District Judge.

Due service of the foregoing Writ and receipt of copy thereof is hereby admitted this 28th day of July, A. D. 1914.

HENRY RODEN,

Attorney for Defendants in Error. [90]

[Endorsed]: No. 97-I. In the District Court, Territory of Alaska, Fourth Division. George W. Albrecht, Plaintiff, vs. Riley & Marston, Defendants. Writ of Error. Filed in the District Court, Territory of Alaska, 4th Div. Jul. 29, 1914. Angus McBride, Clerk. By Geo. W. Albrecht, Deputy. [91]

*In the District Court for the Territory of Alaska,
Fourth Division.*

GEORGE W. ALBRECHT,

Plaintiff,

vs.

J. E. RILEY and M. H. MARSTON, Copartners,
Doing Business as RILEY and MARSTON,
Defendants.

[Citation on Writ of Error (Original)].

The President of the United States, to the Above-named Defendants, J. E. Riley and M. H. Marston, Copartners, Doing Business as Riley & Marston, and to Henry Roden, Esquire, Their Attorney, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held in the City of

San Francisco, State of California, within thirty (30) days from the date of this citation, pursuant to a Writ of Error filed in the Clerk's office of the District Court for the Territory of Alaska, Fourth Division, holding term at Iditarod, in said Division, wherein George W. Albrecht is plaintiff in error, and you are defendants in error, to show cause, if any there be, why [92] the judgment in the said Writ of Error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, this 28th day of July, A. D. 1914, and of the Independence of the United States the one hundred and thirty-ninth.

F. E. FULLER,
District Judge.

Attest my hand and the Seal of the District Court for the Territory of Alaska, Fourth Division, at Iditarod, Alaska, this 28th day of July, 1914.

[Seal] ANGUS McBRIDE,
Clerk of the District Court Fourth Division, Alaska.

Service of the above and foregoing Citation by receipt of a copy thereof is hereby admitted this 28th day of July, A. D. 1914.

HENRY RODEN,
Attorney for Defendants in Error. [93]

[Endorsed]: No. 97—I. In the District Court, Territory of Alaska, Fourth Division. George W. Albrecht, Plaintiff, vs. Riley & Marston, Copartners, Defendant. Citation. Filed in the District Court

Territory of Alaska, 4th Div. Jul. 29, 1914. Angus McBride, Clerk. By Geo. W. Albrecht, Deputy.
[94]

[Certificate of Clerk U. S. District Court to
Transcript of Record.]

*In the District Court for the Territory of Alaska,
Fourth Division.*

No. 97—I.

GEO. W. ALBRECHT,

Plaintiff,

vs.

J. E. RILEY and M. H. MARSTON, Copartners
Doing Business as RILEY & MARSTON,
Defendants.

United States of America,
Territory of Alaska,
Fourth Division,—ss.

I, Angus McBride, Clerk of the District Court, Territory of Alaska, Fourth Division, do hereby certify that the foregoing and hereto annexed ninety-three (93) typewritten pages, numbered from 1 to 93 inclusive, constitutes a full, true and correct copy, and the whole thereof, of the original papers in the above-entitled cause, as the same appear of record and on file in my office, and that the same is made in accordance with the praecipe of the plaintiff and appellant on file herein, wherein Geo. W. Albrecht is plaintiff in error and appellant, and J. E. Riley and M. H. Marston, copartners doing business as Riley & Marston are defendants in error and appellees,

and that the same is by virtue of the Writ of Error and Citation issued in said cause and is a return thereof in accordance thereof. (Original writ of error and citation attached hereto.)

And I do further certify that this transcript was prepared by me in my office, and that the costs of same, amounting to the sum of Thirty-six and 00/100 Dollars (\$36.00), have been paid to me by plaintiff in error and appellant.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said court, at Iditarod, Alaska, this 31st day of July, 1914.

[Seal] ANGUS McBRIDE,
Clerk District Court, Territory of Alaska, Fourth
Division. [95].

[Endorsed]: No. 2483. United States Circuit Court of Appeals for the Ninth Circuit. George W. Albrecht, Plaintiff in Error, vs. J. E. Riley and M. H. Marston, Copartners, Doing Business as Riley and Marston, Defendants in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Territory of Alaska, Fourth Division.

Received September 11, 1914.

F. D. MONCKTON,
Clerk.

Filed September 17, 1914.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.